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OF THE DEPARTMENT OF THE INTERIOR  
IN  
CASES RELATING TO  
THE PUBLIC LANDS

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<sup>1</sup> On page 535, first line of next to last paragraph, for "no" read "now."

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DECISIONS  
RELATING TO  
THE PUBLIC LANDS.

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INSTRUCTIONS.

*March 2, 1915.*

STANDING ROCK INDIAN LANDS—DESIGNATION UNDER ENLARGED HOMESTEAD ACT.  
Lands within the portion of the Standing Rock Indian reservation, in North Dakota, opened under the provisions of the act of May 29, 1908, are subject to designation under the enlarged homestead act as amended by the act of June 13, 1912.

JONES, *First Assistant Secretary*:

I am in receipt of your [Director of Geological Survey] letter of January 23, 1915 (E. H. P. 10106), asking whether certain lands within the portion of the Standing Rock Indian Reservation, in North Dakota, opened under the provisions of the act of May 29, 1908 (35 Stat., 460), are subject to designation under the enlarged homestead act of June 13, 1912 (37 Stat., 132).

The act of May 29, 1908, is similar to the act of May 30, 1908 (35 Stat., 558), under which certain lands within the Fort Peck Indian Reservation, in Montana, were opened to entry; and the Department held in a letter dated July 30, 1913, addressed to the Commissioner of the General Land Office, that the Fort Peck lands are subject to designation in proper cases. The same reasons which prompted that conclusion lead to the conclusion that the Standing Rock lands are also subject to designation, and you are, therefore, advised that such designations may be made, so far as the lands are of the character contemplated by the enlarged homestead act.

In this connection, to avoid confusion, it may be well to differentiate the acts mentioned from the act of August 15, 1894 (28 Stat., 332), which provided for the disposal of certain lands within the Nez Perce Indian Reservation, in Idaho, as the Department held, by letter addressed to you, dated January 7, 1915, that these lands are not subject to designation.

The opening of the Nez Perce lands, while specifically provided for by the act of August 15, 1894, was built up around the provisions of the act of February 8, 1887, which, referring to lands sold or released to the United States, pursuant to an agreement made with the Indians

under the provisions of that act, provides that such lands shall be disposed of by the United States to actual bona fide settlers only, in tracts not exceeding 160 acres to any one person, under conditions prescribed by Congress. The Department held that the 160 acres provision was not modified by the enlarged homestead act, and that the land is not subject to designation.

The Nez Perce act refers to the act of February 8, 1887, and these acts are so interwoven and interlocked as to make the former more or less dependent upon the latter. Prior to the passage of the Nez Perce act, the President, under authority of the act of February 8, 1887, issued a proclamation (dated April 13, 1889) providing for allotments to Nez Perce Indians, and an agreement was made with the Indians under authority of that act, for the sale by them to the United States of the surplus lands, which agreement was accepted, ratified, and confirmed by Congress.

Allotments to Indians within the Standing Rock Reservation were made under authority of the act of March 2, 1889 (25 Stat., 888), and, within the Fort Peck Reservation, under authority of the act of May 30, 1908, *supra*. Neither the Standing Rock act of May 29, 1908, nor the Fort Peck act of May 30, 1908, each *supra*, refers to any treaty with the Indians consenting to the opening of the lands, or agreeing to the prices to be paid, or to the manner in which the lands should be disposed of. Each act summarily directs the opening without reference to any agreement with the Indians. Lands within these reservations were not sold or released to the United States, but it is specifically provided in each of the acts that the United States shall not be bound to purchase any of the lands opened under the provisions of such act, except certain State lands.

For these reasons, the Department concludes that the provisions in the act of February 8, 1887, that lands sold or released to the United States by Indian tribes shall be disposed of by the United States to actual settlers only in tracts not exceeding 160 acres to any one person, is not applicable to Fort Peck or Standing Rock lands.

The act of May 29, 1908, *supra*, provides that the Standing Rock lands shall be disposed of under the general provisions of the homestead and townsite laws; the act of May 30, 1908, *supra*, that the Fort Peck lands shall be disposed of under the general provisions of the homestead, desert land, mineral, and townsite laws. The enlarged homestead law is now a part of the general provisions of the homestead laws, as much as the three-year homestead law of June 6, 1912, or other amendments which have been added to the general provisions of the homestead laws since the passage of the laws providing for the opening of these reservations, and, consequently, with the other amendments, is applicable to these lands.

**WILLIAM F. EARNHEART.**

*Instructions, March 3, 1915.*

**REPAYMENT—UMATILLA INDIAN LANDS—INSTALLMENT OF PURCHASE MONEY.**

Where a homestead entry of Umatilla Indian lands, under the act of March 3, 1885, is canceled for failure to comply with law, after payment of the first installment of the purchase money, the entryman is not entitled to repayment of such installment under the act of March 26, 1908, his only right to repayment, if any, being under the provisions of section 2 of said act of March 3, 1885.

**REPAYMENT UNDER SECTION 2, ACT OF MARCH 3, 1885.**

Instructions given that claims for repayment under section 2 of the act of March 3, 1885, of installments paid on Umatilla lands, shall not be allowed until the land shall have been re-entered and the payments therefor made in full.

**JONES, *First Assistant Secretary:***

The Department has considered the case of William F. Earnheart, wherein application was made for repayment of the first installment of purchase money paid by him in connection with Umatilla homestead entry La Grande, Oregon, 08024.

The entire record was forwarded to the Department by your [Commissioner of the General Land Office] letter of February 1, 1915, submitting for approval the repayment account authorizing repayment of the first installment of purchase money above referred to, \$66.67, under the act of March 26, 1908 (35 Stat., 48).

It appears that Earnheart made the entry involved May 11, 1910, for the S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , and W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 33, T. 1 S., R. 34 E., W. M., La Grande, Oregon, land district, under the acts of March 3, 1885 (23 Stat., 340), and July 1, 1902 (32 Stat., 730).

January 20, 1914, Simon L. Nichols filed contest affidavit against said entry, alleging that Earnheart did not reside upon and cultivate the land involved. No response thereto was made by Earnheart and the entry was accordingly canceled by the Commissioner May 12, 1914.

Exercising his preference right the successful contestant (Nichols) made Umatilla homestead entry 013538, for the W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , and SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , aforesaid section, township, and range, paying therefor \$150, the full purchase price at the rate of \$1.25 per acre. On the same day one Frederick J. McMonies made Umatilla homestead entry 013473, for the SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , same section, township, and range, paying therefor \$16.65, or one-third of the purchase price thereof at \$1.25 per acre.

Sections 1 and 2 of the repayment act of March 26, 1908 (35 Stat., 48), provide:

That where purchase moneys and commissions paid under any public land law have been or shall hereafter be covered into the Treasury of the United States under any application to make any filing, location, selection, entry, or proof, such purchase moneys and commissions shall be repaid to the person who made such application,

entry, or proof, or to his legal representatives, in all cases where such application, entry, or proof has been or shall hereafter be rejected, and neither such applicant nor his legal representatives shall have been guilty of any fraud or attempted fraud in connection with such application.

Sec. 2. That in all cases where it shall appear to the satisfaction of the Secretary of the Interior that any person has heretofore or shall hereafter make any payments to the United States under the public land laws in excess of the amount he was lawfully required to pay under such laws, such excess shall be repaid to such person or to his legal representatives.

After careful consideration of all the facts in this case and the laws applicable thereto, the Department is convinced that this claim is not a proper one for allowance under the act of March 26, 1908, *supra*. The entry in question failed solely on account of the entryman's laches. It was canceled after the voluntary abandonment of the same and for noncompliance with the terms of the act under which it was made. It further appears that no payments were made by Earnheart in excess of lawful requirements, section 2 of the act of March 3, 1885, *supra*, providing in part:

Each purchaser of any of said lands at such sale shall be entitled to purchase one hundred and sixty acres of untimbered lands and an additional tract of forty acres of timbered lands, and no more. He shall pay one-third of the purchase-price of untimbered lands at the time of purchase, one-third in one year, and one-third in two years, with interest on the deferred payments at the rate of five per centum per annum, and shall pay the full purchase-price of timbered lands at the time of purchase.

No discussion of the repayment act of June 16, 1880 (21 Stat., 287), is deemed necessary, it being apparent that the entry was not canceled for conflict nor for erroneous allowance, but, on the other hand, was subject to confirmation upon proper compliance with the laws under which it was made.

Section 2 of the act of March 3, 1885, *supra*, further provides in part:

No patent shall issue until all payment shall have been made; and *on the failure of any purchaser to make any payment when the same becomes due*, the Secretary of the Interior shall cause said land to be again offered at public or private sale, after notice to the delinquent; and if said land shall sell for *more than the balance due thereon*, the surplus, after deducting expenses, shall be paid over to the first purchaser.

It follows that if any relief can be extended Earnheart, it must necessarily be by virtue of that portion of section 2 of the act of March 3, 1885, last cited, and by that provision alone.

The very wording of the act itself makes it clear that in a case such as the one under consideration, where an entryman for any reason *fails* to pay a second or third installment, or both, due on an entry made under said act, he is entitled to reimbursement from the Umatilla Indian fund of the amount paid by him, provided the land is resold and the conditions are such as to warrant reimbursement

in accordance with the terms of that portion of section 2 of the act of March 3, 1885, *supra*, last cited.

The act under which Earnheart made entry is in itself a special repayment act authorizing repayment in a particular class of claims on and after the date of its passage, and is not repealed by the general repayment act of March 26, 1908, *supra*, nor amended thereby.

It is manifest that Earnheart is not entitled to a return of the \$66.67 in question under the act of March 3, 1885, *supra*.

In this case Earnheart paid the first installment of \$66.67, and thereafter the entry was canceled prior to any additional payment by him. Your letter accompanying the repayment account for approval, states that the land has again been resold for \$200, and therefore Earnheart:

is entitled to the return of the difference between the said last-mentioned sum and that remaining due (\$133.33) when his entry was canceled, or \$66.67.

The Department differs with this statement. The successful contestant (Nichols) paid the full purchase price for 120 acres, namely, \$150, and McMonies, who made entry for the remaining 40 acres, originally embraced in Earnheart's entry, has only paid \$16.65, or one-third of the purchase price of said 40-acre tract. It is clearly shown that \$200 has not as yet been paid for said tracts, and therefore Earnheart will not be entitled to repayment from the Umatilla fund under the act of March 3, 1885, *supra*, until such time as full payment has been made for the reentered land. There is no other way of ascertaining the true balance due the original entryman, under section 2 of the act of March 3, 1885, and you are therefore instructed in cases similar to the one under consideration not to allow any claims thereunder unless the land shall have been reentered and paid for in full as required by the act of March 3, 1885, *supra*.

It is noted that you call attention of the Department to six cases that were approved September 9, 1914, authorizing repayment, under the act of March 26, 1908, *supra*, of purchase money paid in connection with Umatilla homestead entries. The cases last mentioned, however, differ from the one under consideration, full payment of the purchase money having been made therein.

It is hereby held that there is no authority for repayment in this case, and the repayment account submitted is herewith returned, unapproved, with direction that the application be denied under the act of March 3, 1885, *supra*, subject to appeal, in accordance with the foregoing.

**RIGHT OF WAY—NOTATION ON FACE OF PATENT.****REGULATIONS.**

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, March 3, 1915.

THE SECRETARY OF THE INTERIOR.

SIR: By departmental order of August 23, 1912, this office was directed, *inter alia*, as follows: "You will, therefore, be guided by the following regulation in the issuance of all patents:"

In every patent hereafter issued for a tract of land traversed by a right of way approved or permitted (including revocable permits) under any of the right of way laws and not forfeited or revoked before such issuance, such right of way or permit shall be expressly noted on the face of the patent by specific reference to the date when, and the statute under which, the approval was made or permit issued. Such notation shall be in substantially the following form.

In compliance with this order it became necessary for the General Land Office to reconstruct and revise its methods and practices so that no patent should be issued for land over which an approved right of way had been allowed without a notation upon such patent of the existence of a possible claim adverse to the patentee by reason of the approval.

A proper compliance with the order made it necessary for the Department of the Interior to request the Department of Agriculture to file in the General Land Office, for notation upon the tract books, all permits issued by the Forester, or by the Department of Agriculture, affecting lands within the jurisdiction of the Department of Agriculture, but which might thereafter be returned to the public domain by exclusion from the forest or other withdrawals on behalf of the Department of Agriculture. It also made it necessary for the various bureaus of the Interior Department to make a like return of all permits or easements granted through such bureau.

For nearly three years now the experiment of noting rights of way upon patents as a matter purely of information and not as a reservation has been tried, and my opinion is that as a matter of administration the extra work entailed in determining the various questions necessarily determinable before such notation can be made is far in excess of any good result which may be had or expected to be had through such notation.

Further, many serious and vexatious questions have arisen as a result of these notations. Scores of letters have been received protesting against the notations and claiming that they constitute a cloud upon otherwise perfect titles. While it is not deemed by this office that these strictures are well taken, in view of the fact that the notation is purely and simply a warning to the patentee, and not in

any sense a reservation, it is difficult to make the ordinary layman understand this, and, in many instances, even lawyers have registered their protests against notations of this character, which to them seems unwarranted. .

Personally, I can see no benefit accruing to a patentee by such notations. If, for instance, a railroad or a canal is constructed across the lands sought to be entered, the physical evidence of some prior claim is so patent that no proposing entryman would be justified in claiming that he took the lands without notice of such rights. If, on the other hand, the railroad, canal, or other structure, right of way for which had been approved by the Secretary of the Interior, had not been constructed, a notice of such right would appear upon the tract books of the local office and the General Land Office, and under the general regulations when the homestead or entry was accepted by the local office, notation of the approved right of way would be placed upon the entry papers. If the entryman accepted the entry with such knowledge of the right of way as is conveyed by the notation on the entry papers, it is difficult to see why he should be given further information by a notation on the patent.

In many instances, and especially in the early days of the administration under the act of March 3, 1875 (18 Stat., 482), rights of way for railroads were *approved* for lines shown to extend over unsurveyed land only. These approvals, of course, were not noted on the tract books of this or the local office, for the obvious reason that the land, being unsurveyed, was not covered by then-existing tract books. Later, when the lands were surveyed, maps of constructed line were filed in accordance with the regulations, but in view of the former approval were not submitted to the Department for consideration, but were only accepted for filing for general information by the Commissioner of the General Land Office. Thus the approval never became a matter of tract-book record.

Many years afterwards the Department ruled that it had no authority to approve right-of-way applications over unsurveyed land, but that such applications could only be accepted for filing for general information, without giving to the applicants any rights other than the general right to construct its road. In other words, such acceptance for filing for general information was simply an intimation that the Department would interpose no objection to applicant's constructing its road whenever it might see fit to do so. In consequence, there are scores of railroad right-of-way applications over unsurveyed lands which prior to the last-mentioned decision of the Department were approved, but which in the light of the departmental holding that the Department was without authority to approve right-of-way applications over unsurveyed land are

probably without effect. This state of affairs has been discovered in the General Land Office, and to remedy it to the extent of obtaining approvals on maps of constructed road predicated upon approvals over unsurveyed land, I transmitted to the Department under date of February 27, 1915, a map of constructed road of the Southern Pacific Railroad Company for approval, to the end that it might be properly noted on the tract books of this and the local office.

Of course, were it not for the necessity of noting approved rights of way upon patents, as required by the present rule, it would be unnecessary to transmit these old maps of constructed road for approval by the Department, in view of the fact that any rights obtained by the Company were so obtained by construction and not by approval. A number of other instances might be mentioned where the Department has been embarrassed by this notation order, notably the case of the Washington Water Power Company, in which very serious and strenuous exception has been taken by the patentees to the notation of the permit which was placed upon their patents. Complaint was received in one case that a purchaser under contract to purchase refused to consummate his contract because of the notation, claiming that it constituted a cloud upon the title.

While he might have gone into court with an action for specific performance and probably would have obtained judgment either for specific performance or damages, he elected rather than to undergo the expense of a suit and the incident delay, to accept \$800 less than the contract price for his land.

To sum the matter up, it appears to me that this order for notation upon patents of rights of way and permits, which was intended to be for the benefit of entrymen, has not materially served that object, besides increasing the work of this office, delaying the issuance of patent and the adjudication of cases. It appears to be generally considered as some sort of a cloud on the title to the land patented. This office has endeavored, to the best of its ability, to make known publicly and to all inquirers that the notation was not to be considered as a reservation, but simply as a notice that there *might* be some claim or right in connection with the easement. Despite all the efforts of this office along this line, however, the impression still seems to prevail that the notation constitutes some sort of a cloud on the title.

One protestant claimed that he had lost the sale of a piece of land purely and simply through such a notation, and concluded that if the Government had legal authority to place a notation on the patent, such notation should be in the body of the patent, and not as a marginal note; that if it was the idea of the Government

simply to notify the patentee that there might be some cloud against the land by way of easement or permit, it could just as well be done by a letter of transmittal as to place it upon the patent, thus clouding the title, at least to some extent, without express authority of law.

I would suggest, therefore, that the order of August 23, 1912, so far as it refers to the *notation* of rights of way and permits upon patents be recalled and vacated and that this office be directed to return to the former practice of issuing patents free and clear of any notation or other extraneous matter, excepting such restrictions as may be proper under the policies enunciated in 23 L. D., 67, and 458, which had been adhered to up to the time of the issuance of the order of August 23, 1912, and such notation or reservations as may be now or hereafter specifically directed by Congress or by the Department.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved April 14, 1915:

A. A. JONES,  
*First Assistant Secretary.*

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### ALASKA ANTHRACITE COAL CO. ET AL.

*Instructions, March 6, 1915.*

ALASKA COAL LANDS—RELINQUISHMENT—LEASE—ACT OF OCTOBER 20, 1914.

The act of October 20, 1914, providing for the leasing of coal lands in the Territory of Alaska, does not accord to persons executing relinquishments of claims for coal lands thereunder, with a view to repayment of the purchase money, a preferential right to lease the relinquished lands, nor does it warrant the acceptance of a relinquishment containing a clause that the relinquishment is made on condition that the person relinquishing will be accorded a right to lease the relinquished lands.

JONES, *First Assistant Secretary:*

I am in receipt of your [Commissioner of the General Land Office] letter of March 4, 1915, transmitting, with recommendation for allowance, the applications of the Alaska Anthracite Coal Company and several other companies and individuals for repayment of purchase moneys paid by them upon applications to enter coal lands in the district of Alaska.

The applications are filed under the provisions of section 3 of the act of Congress approved October 20, 1914 (Public, No. 216). Accompanying the relinquishment of the Alaska Anthracite Coal Company and its application for repayment is a paper executed by the president and secretary of the company, and attested by the corporate

seal, wherein, after referring to the application for repayment and relinquishment, it is stated:

We desire to apply for a lease of said lands, and would respectfully ask for the necessary blanks and instructions as to the preparation of such application, as this, taken with the expected return of the money paid therefor, is the consideration upon which the relinquishment is made.

The act of October 20, 1914, *supra*, provides:

That any person, association, or corporation qualified to become a lessee under this act and owning any pending claim under the public-land laws to any coal lands in Alaska may, within one year from the passage of this act, enter into an arrangement with the Secretary of the Interior by which such claim shall be fully relinquished to the United States; and if in the judgment of the Secretary of the Interior, the circumstances connected with such claim justify so doing, the moneys paid by the claimant or claimants to the United States on account of such claim shall, by direction of the Secretary of the Interior, be returned and paid over to such person, association, or corporation as a consideration for such relinquishment.

There is nothing in said act or in any other applicable law which accords to persons executing such relinquishment a preferential right to a lease of the lands relinquished or of other coal lands, nor is there anything in the law which warrants the acceptance of such a condition as a consideration for the relinquishment, the sole consideration recited in the statute being, as shown by the quotation heretofore made, the return of the purchase money.

The Department, therefore, must decline to accept the conditional relinquishment submitted by the Alaska Anthracite Coal Company.

It is noted that the applications of the Bering River Alaska Coal Company and the Seattle Alaska Anthracite Coal Company, also submitted, are accompanied by what is denominated "notice of intention to apply for lease." It is stated therein that the applicants would like to be notified when the lands are available for leasing and of the terms and conditions upon which a lease may be secured, the relinquishment and application for return of purchase moneys being made to the end "that such lands may be made available for leasing or such other disposition as the United States may see fit."

The relinquishments accompanying these applications are, however, not conditional, and the so-called notice of intention to apply for a lease does not, in the opinion of the Department, attempt to import any other condition for relinquishment than the return of the purchase money.

All the applications for repayment submitted with your letter of March 4 are herewith returned, and you will, after taking appropriate action in the case of the Alaska Anthracite Coal Company's application, and in the absence of other objection, prepare a new recommendation with respect to the other applications for repayment, and retransmit them for further consideration.

## INSTRUCTIONS.

March 8, 1915.

## PRACTICE—RECLAMATION SERVICE.

Any matter at issue arising in connection with and within the jurisdiction of the Reclamation Service, should first be decided by the Reclamation Service, with right of appeal to the Secretary of the Interior.

JONES, *First Assistant Secretary*:

I am in receipt of your [Chief Counsel Reclamation Service] letter of February 20, 1915, concerning the charge to be made to the Arizona Ostrich Company, stated to be the equitable owner and in possession of what is known as the "Broadway Ranch," Salt River Valley, Arizona, for services performed by the United States in transporting water in satisfaction of that ranch's decreed water-right, for 465 acres of land, through the San Francisco Canal.

It appears that the San Francisco Canal was formerly in private ownership, and was later acquired by the United States, and is operated in connection with the Salt River Project. Through some arrangement with the owners of the San Francisco Canal, the exact nature of which does not appear, the water for the "Broadway Ranch" was carried through the San Francisco Canal, the San Francisco Canal Company being paid for such service the sum of \$25 per month. After the acquisition of that canal by the United States, this service of \$25 per month was continued for some time. The Reclamation Service has now fixed a price for carrying that water at \$1.20 per acre for delivery of not to exceed two acre-feet; 60 cents per acre for the water in excess of two acre-feet per acre, and not exceeding four acre-feet; 75 cents per acre for all water furnished in excess of four acre-feet per acre. This is stated to be the same charge as is fixed for other lands in like position.

From a petition filed with your bureau, December 29, 1914, it would appear that the owners of the "Broadway Ranch" contend that by virtue of their prior contract with the San Francisco Canal Company, they are entitled to continued service by the United States at \$25 per acre, and further that the charge as now fixed by the Reclamation Service is unreasonable in proportion to the amount invested in the canal delivering water to their ranch and for the services rendered. No action upon this petition has as yet been taken by the Reclamation Service.

You state further:

The issue is between the ranch owners and the Reclamation Service, and while it is the earnest intent of the Service to act justly and equitably in all such matters, the owners are entitled to a hearing before a more disinterested tribunal.

This matter is submitted to you with the suggestion that the question at issue be heard and determined directly by the Department and that you direct such action to be taken for ascertaining the facts as may be necessary.

In the Williston Land Company (39 L. D., 2), the Department stated at page 4:

the Secretary of the Interior is the supervising head of the Reclamation Service, as he is of the land department and the Indian office. Persons dealing with the Reclamation Service have right to ask his ultimate decision, as do persons dealing with the Indian Office and the General Land Office.

In many matters arising before the General Land Office and the Indian Office, the United States is equally a party in interest as in the present matter, although perhaps in a different manner. The practice as relating to those bureaus has always been that any matter at issue should first be decided by their respective Commissioners. Should any party feel aggrieved by such decision, their rights may be protected upon appeal to the Secretary of the Interior.

I can see no reason why the same procedure should not pertain as to matters of this kind arising in the Reclamation Service. You are accordingly directed to take up the petition of the Arizona Ostrich Company for consideration, and if necessary, you may call upon it for further showing as to the nature of its contract with the private owners of the San Francisco Canal, and also any further showing it may desire to make as to the reasonableness of the proposed charge. Should your decision upon the petition be finally adverse to the petitioner, you will allow it the usual right of appeal such as is provided in paragraphs 139-144, regulations of February 6, 1913, as amended to September 6, 1913 (42 L. D., 348-395).

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## **FLATHEAD INDIAN RESERVATION—IRRIGATION PROJECT.**

### **REGULATIONS.**

This circular contains only the laws specifically applying to homestead entries and water-right applications for lands within the Flathead Irrigation Project and regulations thereunder, but does not contain the general homestead laws, most of which also apply to homestead entries within the project.

### **GENERAL INFORMATION.**

1. The Flathead Irrigation Project is being constructed within the Flathead Indian Reservation under the provisions of the act of April 23, 1904 (33 Stat., 302), as amended by section 15 of the act of May 29, 1908 (35 Stat., 448). Only those lands designated as farm units on farm unit plats approved by the Secretary of the Interior, or under his specific authority, and those Indian lands irrigable therefrom are within the Flathead Irrigation Project. The designation of any tract or tracts of land as a farm unit or farm units includes those lands in the Flathead Project; and the cancellation of any farm unit or farm units eliminates the lands formerly designated as such farm unit or farm units from the project.

2. An entryman for land within the Flathead Project, in addition to complying with the ordinary provisions of the homestead laws applicable to his entry, must pay the appraised Indian price of the land. One-third of the appraised value of the land must be paid when entry is made, and two-fifteenths of the appraised value annually thereafter for five years, beginning one year after the date of filing, without interest.

3. No person can enter more than one farm unit, regardless of its acreage, nor can he enter a part of a farm unit, nor parts of two or more farm units, nor a farm unit and adjacent lands not designated as a farm unit; and no person can enter a farm unit who is not entitled to enter 160 acres under the homestead laws.

4. Persons who enter farm units must pay that part of the cost of building, operating, and maintaining the irrigation works which is assessed against their tracts, in addition to the Indian price, or appraised value of the lands. The building, operation and maintenance charges, against any particular unit or allotment, will be based on the number of acres in it which can be irrigated and not on the entire area of the unit, as there will be no building, operation, or maintenance charges against any land in any unit which can not be irrigated. The entire Indian price must be paid for each acre in the units, regardless of the area of them which can be irrigated.

5. These entries are subject to the commutation provisions of the homestead law. The irrigable areas are announced on farm unit plats and public notice stating the amount of the charges and other details concerning payment is issued by the Secretary of the Interior. This public notice cannot be issued until the completion of the work so that at least one unit of the project may be ready for regular distribution of water under the terms of the law. The time when this can be accomplished will depend upon the appropriations made from year to year by Congress. Until this public notice is issued it will be impossible, in most respects, to give any definite information as to any particular tract or as to the details intended to be covered by such notice; but registers and receivers will, upon inquiry, give all information available relative to the public lands included in the project, and will keep the project manager of the Reclamation Service fully informed, by correspondence, as to conditions affecting the same.

#### ASSIGNMENTS.

6. Under the provisions of the act of June 23, 1910 (36 Stat., 592), persons who have made or may make homestead entries subject to the provisions of the Reclamation Act of June 17, 1902 (32 Stat., 388), may assign their entries in their entirety, or in part, at any time from and after filing with the Commissioner of the General Land Office satisfactory proof of the residence, improvements,

and cultivation required by the ordinary provisions of the homestead law. The act of July 17, 1914 (38 Stat., 510), extends the provisions of the act of June 23, 1910, *supra*, to the Flathead Project. Assignment of part of an entry within the Flathead Project may be made only after the subdivision of the farm unit, as hereinafter provided. (See paragraphs 7 to 11.)

7. Where it is desired to assign a part of a farm unit, an application for the amendment, and subdivision, of such unit should be filed with the Project Manager. The assignment, with accompanying affidavits of the assignor and assignee, must also be filed with the Project Manager for his consideration.

8. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special fiscal agent, Reclamation Service, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey and they will also be required to make good any deficiency in their deposit.

9. When the plats describing the amended farm units are approved by the project manager, he will forward copy of the amendatory plat, in duplicate, together with the assignment and accompanying affidavit, to the local land office, where the amendatory plat will be treated as an official amendment of the farm-unit plat, and one copy will be forwarded by the local land officers to the General Land Office, together with the assignment and accompanying affidavits. A copy of the amendatory plat should also be at once forwarded by the project manager to the Director's office at Washington, D. C., to be formally approved in the usual manner by authority of the Secretary.

10. No assignment of a farm unit or any part thereof shall be accepted by the Commissioner of the General Land Office, or recognized as valid for any purpose, until after the filing in the local land office of the affidavits and certificates required by paragraph 11.

11. Assignments under this act are expressly made subject to the limitations, charges, terms, and conditions of the act of April 23, 1904 (33 Stat., 302), as amended by section 15 of the act of May 29, 1908 (35 Stat., 448), and acts supplementary thereto or amendatory thereof, and inasmuch as the law limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all building and betterment charges, each assignor must present a showing, in the form of an affidavit, to the effect that the assignment is an absolute sale, divesting him of all interest in the premises assigned, and each assignee must present a showing, in the form of an affidavit, that he does not own or hold, and is not claiming, any other farm unit or entry under the act of April 23, 1904 (33 Stat., 302), and the acts supplementary thereto or amendatory

thereof, upon which all installments of building and betterment charges have not been paid in full, and has no existing water-right applications covering an area of land which, added to that taken by assignment, will exceed 160 acres, or the maximum limit of area fixed by the Secretary of the Interior, and a further showing, in the form of a certificate of the project manager, that water-right application therefor is not yet receivable; or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment. A married woman whose husband is claiming any farm unit or entry upon which all installments of building and betterment charges have not been paid will not be allowed to take an assignment under the act of June 23, 1910 (36 Stat., 592), unless such assignment is purchased with her own money and for her own use and benefit. These affidavits may be sworn to before any officer authorized to administer oaths and having a seal, and should be in the following form, inserting the proper names and descriptions in the places indicated.

## AFFIDAVIT OF ASSIGNOR.

That ....., of ....., being duly sworn deposes and says that his or her assignment under the act of July 17, 1914 (38 Stat., 510), extending to the Flathead Project the provisions of the act of June 23, 1910 (36 Stat., 592), of farm unit ....., or the ..... of section ....., township ....., range ....., ..... meridian, is a bona fide and absolute sale of all his or her interest in and to the land and rights therein described and that the assignee takes and holds same, as far as affiant is concerned, absolutely and free from any claim, interest, or demand on the part of the affiant other than (if mortgaged, so state) .....

## AFFIDAVIT OF ASSIGNEE.

That ....., of ....., being duly sworn, deposes and says that he or she is the assignee of ..... under the act of July 17, 1914 (38 Stat., 510), extending to the Flathead Project the provisions of the act of June 23, 1910 (36 Stat., 592), for farm unit ..... or the ..... section ....., township ....., range ....., ..... meridian, and that he or she is a duly qualified assignee for the reason that he or she does not own or hold and is not claiming any other farm unit or entry under the act of April 23, 1904 (33 Stat., 302), as amended by the act of May 29, 1908 (35 Stat., 448), or acts amendatory thereof or supplemental thereto, upon which payment in full of all installments of building and betterment charges has not been made, and that the water right for the lands hereinabove described, together with all water rights or lands held by him or her do not exceed 160 acres of irrigable land and that this assignment is accepted subject to any unsatisfied mortgage against the lands or any part thereof duly filed and recorded in the local land office; (a) that he or she is not now holding or claiming any other farm unit or entry upon which all installments of building and betterment charges have not been paid; or, (in the event the assignee is a married woman, in which case it should be so stated) that this assignment was purchased with her own money and for her own use and benefit; and that he or she has no agreement or understanding by which any interest therein will inure to the benefit of another. Affiant further says that he or she has acquired the entire interest of the assignor in the tract assigned and does not hold same as trustee or in any other manner for or on behalf of the assignor.

(a) Strike out here the part not applicable.

12. Assignments made and filed in accordance with these regulations must be noted on the local land office record and at once forwarded to the General Land Office for immediate consideration, and, if, approved, the assignees in each case will at the proper time make payment of the water-right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

#### MORTGAGES.

13. Mortgagees of lands embraced in homestead entries within the Flathead Project may file in the local land office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entryman in connection with such proceedings, and a like notice of mortgage interest may be filed with the project manager in case of any lands, whether or not water-right application has been filed, including homestead entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water right charges levied by the Secretary of the Interior against such lands, and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payments so made shall be credited on the charges levied by the Secretary of the Interior against such lands.

14. Every such notice of mortgage interest, filed as provided in preceding paragraph must be forthwith noted upon the records of the project manager, and of the local land office, and be promptly reported to the Director of the Reclamation Service, and to the General Land Office, where like notation will be made. Relinquishment of a homestead entry, or part thereof, within the project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein; nor will an assignment of such entry, or part thereof, under the act of July 17, 1914 (38 Stat., 510), extending to the Flathead Project the provisions of the act of June 23, 1910 (36 Stat., 592), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

15. If such mortgagee buys in the land at foreclosure sale, no steps will be taken to cancel the water-right application, on account of failure of the applicant to maintain residence upon or in the neighborhood of the land, until one year after the end of the statutory period of redemption, if there be such statutory period; if not, until one year after the foreclosure sale; nor on account of the holdings

by the same mortgagee of lands in excess of 160 acres or of the limit per single ownership of private lands so fixed by the Secretary of the Interior for which a water right may be purchased until two years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of the mortgagee; and also that within such period of one year an acceptable water-right application for such land be filed by a qualified person, who, upon submitting satisfactory evidence of transfer of title, shall receive a credit equal to all payments theretofore made on account of any water-right charge for said land. To secure the benefits of this order the mortgagee purchasing land at foreclosure sale hereunder must give notice thereof to the register of the local land office and to the engineer in charge of the project within sixty days thereafter.

#### CANCELLATION.

16. All homestead entrymen within the Flathead Project must, in addition to paying the appraised value of the land and water right charges, reclaim at least one-half of the total irrigable area in their entries for agricultural purposes. Failure to make any two payments of the appraised price when due, or to reclaim the land as above indicated, or any failure to comply with the requirements of the homestead law and the acts authorizing the construction of the Flathead Project, as to residence, cultivation, improvements and payments, will render the entry subject to cancellation, and the money paid subject to forfeiture, whether water-right application has been made or not. Failure to make any two payments of the installments of water-right charges when due renders such entries subject to cancellation; and upon receipt of a statement from the Director of the Reclamation Service that two of such payments remain due and unpaid, after proper service of notice upon the entryman and upon the mortgagee, if any such there be of record, the date and manner of service being stated, the entry will, without further notice, be canceled by the Commissioner of the General Land Office.

#### WIDOWS AND HEIRS OF ENTRYMEN.

17. The widows, heirs or devisees of persons who make entries within the Flathead Project will not be required both to reside upon and cultivate the lands covered by the entry of the persons from whom they inherit, but they must reclaim at least one-half of the total irrigable area of the entry for agricultural purposes, as required by the law, and make payment of all unpaid charges when due.

18. Upon the death of a homesteader having an entry within the project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes, be sold for the benefit of such heirs. (See Heirs of Frederick C. De Long, 36 L. D., 332). The purchaser and his assignees take subject to the payment of the water-right charges authorized by law and the regulations thereunder and must reclaim one-half the irrigable area, as required by said law, but are not required otherwise to comply with the homestead law.

FINAL AND COMMUTATION PROOFS, CERTIFICATES AND PATENTS.

19. Registers and receivers are directed to furnish the chief of field division with copies of application to make proof on all entries, noting on each application the fact that the land is within the project. As soon as such notice is received by the chief of field division, he will refer the same to the project manager, who will make report by indorsement on the notice, as to whether the lands are needed for construction purposes, and as to any other matters that he may be instructed to report on by special instructions. This notice should be returned by the project manager to the chief of field division in sufficient time to enable that officer to return the same to the local land office prior to the date fixed for proof.

20. In all cases where the project manager reports that the lands are needed for construction purposes, the register and receiver will forward the proof, if found to be regular, to the General Land Office without issuance of final certificate. In all cases, whether or not the lands are needed for construction purposes, the register and receiver will forward the proof, if found to be regular, to the General Land Office, without issuance of final certificate, unless there has been a final affidavit, duly corroborated by two witnesses and approved by the project manager, showing the payment of all the charges, including the water-right charges, due in connection therewith to date, and the reclamation for agricultural purposes of at least one-half of the irrigable area of the entry, as provided in paragraph 26 hereof. If such affidavit showing reclamation and payment of charges is filed, and the proof of compliance with the ordinary provisions of the homestead law as to residence, improvements, and cultivation is found, on examination by the local land officers, to be sufficient, they will issue final certificate on the entry as hereinafter provided.

21. If any proof offered under this law be irregular or insufficient, the register and receiver will reject it and allow the entryman the usual right of appeal, and if the General Land Office finds any proof forwarded to be insufficient or defective in any respect, whether or not final certificate has issued on the same, the proof or certificate may be held for rejection or cancellation and the entryman will be

notified of that fact, or he may be given an opportunity to cure the defect or to present acceptable proof.

22. Soldiers and sailors of the War of the Rebellion, the Spanish-American War, or the Philippine insurrection, and their widows and minor orphan children who are entitled to claim credit for the period of the soldiers or sailors service under the homestead laws will be allowed to claim credit in connection with entries within the Flathead project, but will not be entitled to receive final certificate or patent until the requirements as to reclamation and payment of the water right charges have been met.

23. Entrymen who have resided on, cultivated, and improved their lands for the time required by the homestead law, and have submitted proof, which has been found satisfactory thereunder by the General Land Office, but who are unable to furnish proof of reclamation because water has not been furnished, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry and payment of all charges due under public notices and orders issued in pursuance of the law.

24. Upon the submission of proof on entries within the Flathead project, registers and receivers will accept only the payments of Indian charges and the testimony fees for "reducing testimony to writing and examining and approving testimony," and will not accept final commissions payable on such entries until proof is received of compliance with the requirements of the law as to reclamation and payment of the charges which have become due.

25. Entrymen in making proof of compliance with the law as to reclamation of one-half of the irrigable area and payment of charges due, must submit an affidavit, duly corroborated by two witnesses, and sworn to before an officer authorized to administer oaths and having a seal, in duplicate, to the project manager showing those facts. Thereupon it shall be the duty of the project manager to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Director of the Reclamation Service and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds

that reclamation has not been accomplished as required he will forward the proofs to the register and receiver of the land district in which the land is situated, with his report or findings thereon, and such officers will thereupon in turn transmit the showing to the General Land Office for its action. If the proof be rejected by the Commissioner of the General Land Office, appeal will lie to the Secretary of the Interior as in other cases provided, it being the purpose to issue final certificate upon any such entry only after a final determination that all water-right charges due on account thereof have been paid and that reclamation has been accomplished as required by law. Where prior to issuance of public notice water has been furnished to entrymen on a water-rental basis, and by means thereof reclamation sufficient to obtain patent under the act of August 9, 1912, has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen desiring to obtain patent under that act upon the form of application approved by the Department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by the Secretary.

26. To comply with the provisions of the law requiring the reclamation of one-half the irrigable area of an entry within the Flathead project, the land must have been cleared of brush, trees, and other incumbrances, provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least two years next preceding the date of approval by the project manager of proof of reclamation, except as prevented by hailstorm or flooding, a satisfactory crop must be grown thereon. A satisfactory crop during any year shall be any one of the following: (a) a crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (b) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover; or (c) a season's growth of orchard trees, or vines, of which 75 per cent shall be in a thrifty condition.

27. Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912 (37 Stat., 265), extended to the Flathead Project by the act of July 17, 1914 (38 Stat., 510), if proof of compliance with the homestead law has been previously submitted, and has been accepted by the Commissioner of the General Land Office, or if such proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation upon examination by the local land officers, the register and receiver will issue final certificate on the entry, proceeding in the usual manner, and forward the same with the proof of reclamation and pay-

ments to the General Land Office. The final certificate so issued must be endorsed by the local land officers across the face of each certificate when issued as follows: "Subject to lien, under act of August 9, 1912 (37 Stat., 265), as extended to the Flathead Project by the act of July 17, 1914 (38 Stat., 510)." Upon receipt of such case in the General Land Office, if found to be regular, it will be approved for patent under said acts, and patent issued reserving the lien as provided in the act of August 9, 1912.

28. The Director of the Reclamation Service will, upon the full payment of all building and betterment charges by any water user, issue certificate of the full payment of such charges, releasing the lien therefor reserved in the patent under the act of August 9, 1912.

Approved, March 1, 1915:

CLAY TALLMAN,

*Commissioner.*

Approved, March 10, 1915:

ANDRIEUS A. JONES,

*First Assistant Secretary.*

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### DANIEL B. CLUSTER.

*Decided March 6, 1915.*

#### HOMESTEAD APPLICATION—PENDING ALLOTMENT APPLICATION.

A homestead application should not be rejected because of conflict with a pending Indian allotment application, but should be received and suspended to await final action on the allotment application.

JONES, *First Assistant Secretary:*

Daniel B. Cluster appealed from decision of October 8, 1914, rejecting his homestead application for NW.  $\frac{1}{4}$ , Sec. 5, T. 35 N., R. 49 E., M. M., Glasgow, Montana, for conflict with Indian allotment application pending.

August 17, 1911, Alexander Brien, Sr., for his minor child, Napoleon, filed allotment application for unsurveyed land described as NW.  $\frac{1}{4}$ , Sec. 5, in above township. February 24, 1914, the Commissioner of the General Land Office asked for report from the Commissioner of Indian Affairs if Napoleon Brien was entitled to an allotment. November 30, 1914, the Commissioner of Indian Affairs reported that his office "is unable to certify that Napoleon Brien, minor child of Alexander Brien, is entitled under existing law to an allotment on the public domain. It is, therefore, recommended the application be rejected." Before receipt of this report, the Commissioner of the General Land Office rejected Cluster's application for conflict with the Indian allotment application. The action of the Commissioner was erroneous. An application for Indian allotment no more segregates land than does an application for entry. Where

an application for entry is pending and another application is later filed, the second application should not be rejected but suspended to await action on the first. Jerry Watkins (17 L. D., 148). Cluster's application should, therefore, have been suspended to await final action on the application for Indian allotment. It is, however, unnecessary to hold Cluster's application longer in suspense as the Commissioner of Indian Affairs reported that he was unable to certify that the Indian applicant is entitled to an allotment on the public domain and recommended that the application be rejected. It is so ordered. The application for Indian allotment being out of the way, Cluster's homestead application will be allowed, if no other objection appear.

The decision is reversed and papers remanded for further appropriate action.

### INSTRUCTIONS.

March 15, 1915.

#### ALASKA LANDS—RESERVATION OF ROADWAY IN PATENTS.

Directions given that the roadway reservation mentioned in section 10 of the act of May 14, 1898, be omitted in all future patents for lands in Alaska.

JONES, *First Assistant Secretary*:

The Department on February 26, 1914, requested an expression of opinion from your [Commissioner of the General Land Office] office as to whether the roadway reservation mentioned in section 10 of the act of May 14, 1898 (30 Stat., 409), should be held applicable to all nonmineral claims abutting on navigable waters in the district of Alaska, and also whether the practice of inserting such a reservation in patents should be continued. On July 6, 1914, you submitted your conclusions and recommended, in view of the fact the statute contained no direction that the reservation of a roadway should be recited in any patent, and the further fact that the ultimate determination of the extent of the applicability of the roadway reservation rests with the courts, that the recital be omitted from future patents.

This roadway reservation is found in section 10 of said act and that section provides primarily for the purchase of trade and manufacture sites and limits the frontage of such claims along navigable waters to 80 rods. It is prescribed that there shall be reserved between tracts sold or entered under the provisions of the act a space of 80 rods in width on lands abutting on navigable waters, and also that the Secretary of the Interior may grant the use of such reserved lands for landings and wharves—

with the provision that the public shall have access to and proper use of such wharves, and landings, at reasonable rates of toll to be prescribed by said Secretary, and a road-

way sixty feet in width, parallel to the shore line as near as may be practicable, shall be reserved for the use of the public as a highway.

In the regulations of January 13, 1904 (32 L. D., 424, 442), it was stated that:

Since it is its purpose to reserve a roadway for public use as a highway along the shore line of navigable waters, it is held to relate to the lands entered or purchased under this act, as well as to the reserved lands; otherwise it would serve little or no purpose.

The Ninth Circuit Court of Appeals on October 30, 1910, in the case of *Dalton v. Hazelet* (182 Fed., 561, 571, 572), which involved a patented soldiers' additional homestead entry abutting on navigable waters in which it was contended that the patentees littoral rights were cut off by this roadway reservation, said:

The last clause above quoted refers to a roadway through the reserved lands previously described, and not through lands granted in fee simple under the homestead laws. \* \* \* There is no provision in this statute (act of March 3, 1903, 32 Stat., 1028) reserving a roadway or making any other reserve above high-water mark through lands granted under the homestead laws. Furthermore, no such reserve is made in the patent. The patent is in the record, and, as previously stated, the land is described by courses and distances as containing the specific quantity of 163.65 acres. The lands granted are made subject to a reservation; but it is the reservation of a "right of way thereon for ditches and canals constructed by authority of the United States," thus excluding by implication, if that were necessary, a reservation under the act of May 14, 1898. It follows that plaintiff's littoral rights were not cut off either by the railroad right of way or by a supposed roadway under the latter act.

It is well established that attempted reservation or limitation, which is not prescribed or authorized by law, when inserted in patents for public lands, has no operation and does not attach to or affect the title conveyed. Officials of the land department, being merely agents of the law, can not create reservations or make exceptions affecting titles to public lands.

In the case of *Deffeback v. Hawke* (115 U. S., 392, 406), which involved a patent under the mining laws, the court said:

The land officers, who are merely agents of the law, had no authority to insert in the patent any other terms than those of conveyance, with recitals showing a compliance with law and the conditions which it prescribed.

The case of *Davis v. Weibbold* (139 U. S., 507, 527, 528), involved the validity of a limiting clause inserted in a townsite patent, and the court there said:

But we do not attach any importance to the exception, for the officers of the land department, being merely agents of the Government, have no authority to insert in a patent any other terms than those of conveyance, with recitals showing compliance with the conditions which the law prescribes. Could they insert clauses in patents at their own discretion they could limit or enlarge their effect without warrant of law. The patent of a mining claim carries with it such rights to the land which includes the claim as the law confers, and no others, and these rights can neither be enlarged nor diminished by any reservations of the officers of the land department, resting for their fitness only upon the judgment of those officers.

The case of *Shaw v. Kellogg* (170 U. S., 312, 337), involved the approval of one of the so-called Baca Float selections, and the court there used the following language:

What is the significance of, and what effect can be given to the clause inserted in the certificate of approval of the plat that it was subject to the conditions and provisions of the act of Congress? We are of opinion that the insertion of any such stipulation and limitation was beyond the power of the land department. Its duty was to decide and not to decline to decide; to execute and not to refuse to execute the will of Congress. It could not deal with the land as an owner and prescribe the conditions upon which title might be transferred. It was agent and not principal. Congress had made a grant.

With respect to the limitations recited in the patent for placer mining claims, the Supreme Court in *Sullivan v. Iron Silver Mining Company* (143 U. S., 431, 441), said:

The exception of the statute can not be extended by those whose duty it is to supervise the issuing of the patent.

In the recent case of *Burke v. Southern Pacific Railroad Company* (234 U. S., 669), the Supreme Court had occasion to consider the mineral exception clause recited in railroad patents. In the course of that opinion, delivered by Mr. Justice Van Devanter, the patent cases above mentioned were cited and discussed. The court at pages 709-710 said:

The terms of the patent whereby the Government transfers its title to public land are not open to negotiation or agreement. The patentee has no voice in the matter. It in no wise depends upon his consent or will. He must abide the action of those whose duty and responsibility are fixed by law. Neither can the land officers enter into any agreement upon the subject. They are not principals but agents of the law, and must heed only its will. . . . Nor can they indirectly give effect to what is unauthorized when done directly . . . they can not alter the effect which the law gives to a patent while it is outstanding. . . . The mineral land exception in the patent is void.

Even if it should be ultimately determined by the courts that the highway reservation under consideration applies to all claims except those under the townsite and mineral land laws (see section 26, act of June 6, 1900, 31 Stat., 321), it does not follow that patents need recite such a reservation in order that it be effective, for if such reservation is created and exists by virtue of the law, a failure to insert a recital thereof in the patent issued would not defeat the reservation. The statute contains no direction to the officials of the land department to insert any such recital in patents issued, as certain other statutes do. For instance, the act of August 30, 1890 (26 Stat., 391), prescribes:

That in all patents for lands hereafter taken up under any of the land laws of the United States . . . west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described, a right of way thereon for ditches or canals constructed by the authority of the United States.

The recent Alaska Railroad Act of March 12, 1914 (38 Stat., 305, 307), contains the following provision:

And in all patents for lands hereafter taken up, entered or located in the Territory of Alaska there shall be expressed that there is reserved to the United States a right of way for the construction of railroads, telegraph, and telephone lines, etc.

In view of the foregoing and of the doubt and conflict of opinion existing as to the scope and applicability of the Alaska highway reservation clause, I deem it advisable that there be omitted from all future patents any recital or mention of such reservation. Your office will, therefore, discontinue the present practice of inserting in Alaska patents a recital of a roadway reservation, pursuant to the act of May 14, 1898, *supra*.

### ENLARGED HOMESTEAD ACT—SECTIONS 1 TO 5 EXTENDED TO SOUTH DAKOTA.

#### CIRCULAR.

[No. 389.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., March 16, 1915.

#### REGISTERS AND RECEIVERS,

*United States Land Offices, Bellefourche, Gregory, Lemmon,  
Pierre, Rapid City, and Timber Lake, South Dakota.*

SIRS: 1. Section 2 of the act of Congress approved March 4, 1915 (Public, No. 299), provides that the provisions of the first five sections of the enlarged homestead act of February 19, 1909 (35 Stat., 639), as amended, shall extend to the State of South Dakota.

2. Your attention is, therefore, directed to said sections of the act mentioned (as amended down to March 2, 1915), copied on pages 32 and 33 of homestead circular No. 290, approved January 2, 1914; also to the regulations under that legislation, found in paragraphs 43, 44, 45, 46, 47 and 50 of said circular. [43 L. D., 18-21.]

3. Public Act No. 279, approved March 3, 1915, provides for the allowance of additional entries under the enlarged homestead act after submission of proofs on the original filings; provided the parties still own and occupy the tracts first entered; and the first section of Public Act No. 299 (above referred to), provides for a preference right of entry to be accorded, where designation of the land involved has been made pursuant to the applicant's petition. Instructions will shortly be issued under said recent legislation.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved, March 16, 1915:

A. A. JONES,  
*First Assistant Secretary.*

**ENLARGED HOMESTEAD ACT—SECTIONS 1 TO 5 EXTENDED TO KANSAS.**

CIRCULAR.

[No. 390.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., March 16, 1915.*

REGISTERS AND RECEIVERS,  
*United States Land Offices,  
Topeka and Dodge City, Kansas.*

SIRS: 1. The act of Congress approved March 3, 1915 (Public, No. 272), extends to the State of Kansas sections 1 to 5, inclusive, of the enlarged homestead act of February 19, 1909 (35 Stat., 639).

2. Your attention is, therefore, directed to said sections of the act mentioned (as amended down to March 2, 1915), copied on pages 32 and 33 of homestead circular No. 290, approved January 2, 1914; also to the regulations under that legislation, found in paragraphs 43, 44, 45, 46, 47 and 50 of said circular. [43 L. D., 18-21.]

3. Public Act No. 279, approved March 3, 1915, provides for the allowance of additional entries under the enlarged homestead act after submission of proofs on the original filings, provided the parties still own and occupy the tracts first entered; and Public Act No. 299, approved March 4, 1915, provides for a preference right of entry to be accorded, where designation of the land involved has been made pursuant to the applicant's petition. Instructions will shortly be issued under said recent legislation.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved, March 16, 1915:

A. A. JONES,  
*First Assistant Secretary.*

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**STATE OF WASHINGTON v. LUSBY ET AL.**

*Decided March 17, 1915.*

**SELECTION UNDER THE ACT OF JULY 1, 1898—SCHOOL INDEMNITY SELECTION.**

No settlement, residence, or improvement is required under a selection made under the act of July 1, 1898, based upon a settlement claim or entry in conflict with the Northern Pacific grant and adjusted under that act, where the person making the selection had fully complied with the requirements of the homestead law upon the land in conflict; and such selection will defeat a subsequent school indemnity selection of the same land by the State.

JONES, *First Assistant Secretary:*

The State of Washington appealed from decision of May 22, 1913, rejecting its indemnity school land selection list No. 136, under the

act of February 22, 1889 (25 Stat., 676), for lots 1, 2, 3 and 4, S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 6; N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 8; NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 10, T. 32 N., R. 42 E., W. M., Spokane land district, for conflict with prior individual lieu selections by Ben Lusby and others and homestead entry 07153, to the extent of all the tracts applied for, except lots 3 and 4, Sec. 6.

Township plat of survey was approved October 26, 1910, and filed at the local office December 14, 1911. Long prior to that date, the individual selections were filed under the act of July 1, 1898 (30 Stat., 597, 620), based on completed entries, and application for adjustment of these selections was filed December 18, 1911, in three of the cases and January 2, 1912, in the other two cases, which the Commissioner found to be satisfactory.

The State contends that its rights can be defeated only by a prior selection founded upon actual settlement, residence, and improvement of the selected land. The Commissioner held that this contention was without merit and rejected the selection.

The same contention is advanced by the State on its appeal. It is unsound. Under the act of July 1, 1898, *supra*, in adjustment of settlement claims with the Northern Pacific Railway Company, the settlers, in those cases, had completely complied with the homestead law. Their entries were complete and, under the statute, they are entitled to credit for their compliance with the homestead law on their original claims. Their residence and cultivation there are credited to them upon their new location. They are, in contemplation of the act, settlers on these lands.

The decision is correct and is affirmed.

## STATE OF CALIFORNIA ET AL.

*Decided March 17, 1915.*

### SCHOOL INDEMNITY SELECTION—TRANSFEE—RESTRICTED PATENT.

The land department is without authority to issue limited patent under the act of July 17, 1914, for lands embraced in a school indemnity selection by the State of California, upon waiver by the transferee of the State of all right to the oil deposits therein, unless the State shall have first consented to the issuance of such restricted patent.

JONES, *First Assistant Secretary*:

L. J. Abrams, transferee of the State of California, appealed from decision of June 19, 1914, holding for cancellation the State's indemnity school selection for NE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 8, T. 17 N., R. 11 E., M. D. M., San Francisco, California, land district, made October 21, 1908, on the ground that the land was withdrawn February 2, 1910, for petroleum reserve.

The decision is correct and is affirmed. Administrative ruling of July 15, 1914 (43 L. D., 293).

Abrams represents the land was taken solely for agricultural purposes, without expectation of profiting by the oil deposits therein, and asks consideration of his equity.

This the Department might do under act of July 17, 1914 (Public, No. 128), with the State's consent. The State is the controlling party. It is not bound to accept less title to selected land than an undiminished fee. In a former case before the Department, its transferee requested the surveyor general to waive claim to the mineral deposit and accept surface patent, but the surveyor general declined on the ground that he was not authorized to make such waiver. The Department is without power to accept Abrams's waiver and issue restricted patent to the State.

### EDWARD E. PRIDE.

*Decided March 17, 1915.*

#### FLATHEAD INDIAN LANDS—TIMBER LANDS—CLASSIFICATION.

Lands within the ceded portion of the Flathead Indian reservation classified as of equal value for the timber thereon and for grazing purposes are not timber lands within the meaning of the act of April 23, 1904, which declares that "lands more valuable for timber than for any other purpose" shall be classified as timber lands.

JONES, *First Assistant Secretary*:

Edward E. Pride has appealed from decision of December 19, 1914, by the Commissioner of the General Land Office, rejecting his homestead application for the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  and NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 22, T. 18 N., R. 19 W., M. M., Missoula, Montana, land district. The cause of the rejection was, as stated by the Commissioner, that the tracts were classified as timber lands, and therefore not subject to homestead entry until the timber had been sold and removed therefrom, and the land opened to entry under regulations to be provided by the Secretary of the Interior.

The tracts involved are a portion of the ceded Flathead Indian Reservation, for the disposition of which provision was made by the act of April 23, 1904 (33 Stat., 302), and the act of March 3, 1909 (35 Stat., 781, 796). The act first above mentioned provided for classification and appraisal of such lands as agricultural lands of the first and second class, timber lands, mineral lands, and grazing lands. The lands to be classified as timber lands were defined in said act to be "lands more valuable for timber than for any other purposes."

The said act of 1909 provided that the lands so classified as timber lands would not be subject to homestead entry until the timber shall have been sold and disposed of, and the lands opened under the regulations provided by the Secretary.

October 13, 1913, the Secretary of the Interior approved a schedule of the Flathead lands, which included the tracts here in question. Therein the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  of said section 22 was classified as grazing land, and appraised at \$2.50 per acre, as its value for grazing purposes. The schedule also showed that the land contained 17,500 feet of timber, valued at \$3.50 per thousand, or \$61.25 for the timber. Therefore, the total appraised value of said tract is \$161.25. It is more valuable for grazing purposes, and is, therefore, subject to homestead entry. The NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$  of said section 22 is therein valued at \$3.50 per acre for grazing purposes, or \$140 as its total value for that purpose. It is also stated that said tract contains 40,000 feet of timber, appraised at \$3.50 per acre, making a timber value of \$140, and a total value of \$280 for the timber and for grazing.

It will thus be seen that the latter tract is appraised as of equal value for its timber and for grazing purposes.

In a letter submitted by the Indian Office, which accompanied the said schedule, and which letter was approved by the Department October 13, 1913, the following sentence appears:

In those cases where the land and timber value are equal, such lands should not, it is believed, be disposed of until the timber has been sold and removed.

It is clear that this rule is not in harmony with the provisions of the law above quoted, and therefore said direction will not be followed in the adjudication of this and similar cases. The law provides that timber lands are such as are more valuable for timber than for any other purpose. In this case, the NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$  of said section 22 is of equal value for its timber and for grazing purposes—not *more* valuable for its timber—and hence it should not be considered or classified as timber land.

Accordingly the decision appealed from is reversed, and if no other objection appear, the entry will be allowed.

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### ROY H. HAYES ET AL.

*March 13, 1915.*

#### NATIONAL FORESTS—ELIMINATED AND WITHDRAWN LANDS—ACT OF JUNE 11, 1906.

Where lands eliminated from a national forest and withdrawn under the act of June 25, 1910, for classification, were actually opened to settlement and entry under the act of June 11, 1906, before the issuance of the eliminating proclamation, they are subject to entry under that act by either the person on whose application they were listed or by any other qualified applicant.

#### ELIMINATION OF LISTED LANDS—ACT OF JUNE 11, 1906.

Lands listed for opening under the act of June 11, 1906, before the dates of eliminating proclamations, are subject to entry under that act by the persons on whose applications the listings were made, but can not be entered by any other persons.

## ELIMINATING PROCLAMATIONS—STATUS OF LANDS UNDER ACT OF JUNE 11, 1906.

The recital in a proclamation eliminating lands from a national forest that the proclamation "shall not prevent the settlement and entry of any lands heretofore opened to settlement and entry" under the act of June 11, 1906, does not except or exclude the land from the elimination made by the proclamation, its only effect being to leave the lands subject to entry under said act by persons entitled to make such entry, notwithstanding they have been restored to the public domain and made subject to other forms of disposal.

JONES, *First Assistant Secretary*:

By its letter of November 13, 1914, your [Secretary of Agriculture] Department called attention to three entries (Helena 06866 and 06919, and Lewistown 024434), made under the act of June 11, 1906 (34 Stat., 233), and asked an expression of opinion by this Department which calls for an answer to the question as to how far, and when, entries may be allowed under that act for lands which have been both *eliminated* from national forests and *withdrawn* under the act of June 25, 1910 (36 Stat., 847), for classification, by a proclamation which declares that "This proclamation shall not prevent the settlement and entry of any lands heretofore opened to settlement and entry" under the act of June 11, 1906, *supra*.

In reply, I will say: (1) That lands which are actually opened to settlement and entry before an eliminating proclamation issues are subject to entry under the act of June 11, 1906, by either the person on whose application they were listed, or by any other qualified applicant; as was held by this Department in the cases of Robert T. Allen, decided June 14, 1913; and Virginia F. Close, decided December 3, 1914, both unreported.

In these cases the lands were opened before the eliminating proclamation issued, but neither of the entrymen had asked for the listing of the lands; and in the Close case the lands were both eliminated and withdrawn for classification by the same proclamation which eliminated and withdrew the lands involved in the entries to which you call attention.

(2) In cases where the lands have been listed for opening by your Department before the dates of eliminating proclamations, and are not actually opened to entry by this Department until after the proclamations, entries may be made under the act of June 11, 1906, by the persons on whose applications the listings were made, but they can not be entered by any other persons. (See instructions of September 19, 1913, 42 L. D., 425).

These instructions go no further, however, than to say that the lands which have been merely listed, but not opened, may be entered: (1) By persons on whose applications they were listed; and (2) by persons holding preferred rights by reason of settlements made prior to January 1, 1906.

In view of the fact that the proclamations say that *opened lands* may be entered, and do not say that entries may be made for merely *listed lands*, I am of the opinion that, even under the very liberal instructions above referred to, the right of entry can not be extended to any applicants who did not ask for the listing.

Applying these conclusions to the entries mentioned I find as follows: Helena 06866, made by Rey H. Hayes, is valid, under the decisions in the Allen and Close cases, *supra*, because the lands entered were opened to entry before the eliminating proclamation was issued, and its validity is not affected by the fact that the entered lands were not listed on the entryman's application; Helena 06919, made by James T. Doyle, is valid, under the instructions of September 19, 1913, *supra*, notwithstanding the fact that the lands entered were not restored to entry before the eliminating proclamation issued. The entry is valid because the lands were listed on the entryman's application; Lewistown 024434, made by Hiram Meyer, is invalid, because the lands entered were neither listed on the entryman's application, nor opened to entry before the eliminating proclamation was issued.

In this connection, it is deemed advisable to note the fact that a recital in a proclamation, such as is above quoted, does not except or exclude the land from the elimination made by the proclamation. In other words, it does not retain the lands as a part of a national forest, or exclude them from entry or disposal under the general provisions of the public land laws, when they are opened for that purpose. The only object, and the only effect of such a recital, is to leave the lands subject to entry under the act of June 11, 1906, by persons entitled to make such an entry, notwithstanding the fact that they have been restored to the public domain and made subject to other forms of disposal.

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**WISCONSIN CENTRAL SETTLERS—ACT OF FEBRUARY 25,  
1915.**

CIRCULAR.

[No. 392.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, March 19, 1915.*

REGISTERS AND RECEIVERS,  
*United States Land Offices.*

GENTLEMEN: Your attention is directed to the provisions of the act of Congress approved February 25, 1915 (Public, 255), entitled "An act for the relief of certain persons who made entry under the

provisions of section six, act of May twenty-ninth, nineteen hundred and eight," which reads as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all entries made by beneficiaries under section six of the act of Congress approved May twenty-ninth, nineteen hundred and eight, entitled "An act authorizing a resurvey of certain townships in the State of Wyoming, and for other purposes" (Thirty-fifth Statutes, page four hundred and sixty-five), in connection with which such beneficiaries have submitted proof of their compliance with the homestead law in Wisconsin, and where such proof shows full five years' residence and improvements on the Wisconsin land, to which their title failed by reason of the decision of the Supreme Court in the case of the Wisconsin Central Railroad Company against Forsythe (One hundred and fifty-ninth United States, page forty-six), whether such entry is now being asserted by the original entryman or by his transferee, be, and the same are hereby, confirmed, and the Secretary of the Interior is directed to issue patents thereon: *Provided*, That this legislation is to be construed as only removing the objection with relation to transfer, heretofore raised by the Interior Department against said entries, and is not to be construed as confirming entries, if any, made for lands not subject to entry or entries made by persons not entitled thereto: *Provided further*, That if any of the said entries under the remedial act or amendments thereto have been canceled and the lands embraced therein reentered by intervening adverse claimants, such canceled entries are not to be reinstated and validated by this act.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved, March 19, 1915:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

## AGRICULTURAL ENTRIES OF PHOSPHATE, OIL, AND OTHER MINERAL LANDS—ACT OF JULY 17, 1914.

### REGULATIONS.

[No. 393.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., March 20, 1915.*

REGISTERS AND RECEIVERS,

*United States Land Offices (Exclusive of Alaska).*

SIRS: The following regulations are for the guidance of yourselves and the public in matters affected by the act of Congress approved July 17, 1914 (38 Stat., 509), entitled "An act to provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals," a copy of which is hereto appended.

## SCOPE OF THE ACT.

(1) The legislation is general and comprehensive, and operates in all the States containing public lands of the character specified. It does not apply to lands in the Territory of Alaska, or to lands in the United States which for other reasons are not available or which, in other words, are not subject to entry. This statute fully covers the field included in the special acts of August 24, 1912 (37 Stat., 496), providing for certain agricultural entries and selections on oil and gas lands in the State of Utah, and of February 27, 1913 (37 Stat., 687), authorizing selections by the State of Idaho of phosphate and oil lands in that State. This broad and general act supersedes and displaces said special laws, and by implication works their repeal. Therefore, all entries, selections, or locations of lands of the character described in those special statutes made in the States mentioned on or after date of this general act (July 17, 1914), will be treated as within the scope of the latter act, and will be adjudicated thereunder. Also, all such entries, selections, or locations made under those special acts prior to, and not perfected at, that date will be carried to completion, approved, and patented, if at all, under the general act.

(2) Section 1 of the act authorizes the appropriation, location, selection, entry, or purchase under the nonmineral land laws of the United States, if otherwise available, of lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for such deposits, whenever such lands are sought with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same. Any form of appropriation under the proper applicable nonmineral land laws is authorized, with a reservation of the minerals as specified, to the same extent as if no withdrawal or classification had been made. The only exception is that no desert land entry made under the act shall contain more than 160 acres.

The term "person" used in this act will be interpreted as covering a State (see State of Utah, 38 L. D., 245), or other corporation, or an association when duly qualified.

Under the proviso in section 2 of the act applications for land, either withdrawn or classified, may be presented with a view of proving that the lands applied for, if withdrawn, are not of the character intended to be included in the withdrawal, or, if classified, of disproving the classification and securing patent free from reservation; also, claimants for lands withdrawn or classified for the specified minerals *subsequent* to location, selection, entry, or purchase have the privilege

of showing at any time before final entry, purchase, or approval of selection or location that the lands sought are in fact nonmineral in character.

(3) This act in many respects resembles that of March 3, 1909 (35 Stat., 844), which provides for the protection of the surface rights of entrymen upon lands subsequently classified, claimed, or reported as coal lands, and also, that of June 22, 1910 (36 Stat., 583), authorizing certain forms of agricultural entries and selections on withdrawn or classified coal lands. The general instructions under these acts of September 7, 1909 (38 L. D., 183); September 8, 1910 (39 L. D., 179); May 23, 1912 (41 L. D., 30); and June 14, 1912 (41 L. D., 89), may be followed, so far as applicable, in matters of practice and procedure not specifically covered by these regulations.

(4) Section 3 of the act is both retrospective and prospective, and under it any person who, prior to the act, had applied, or who after the passage of the act, shall apply for lands which are subsequently withdrawn, classified or reported as being valuable for the specified minerals, and which are otherwise available, may upon application therefor, and the making of satisfactory proof, receive a patent with a reservation. In this particular, the statute is quite similar to that of March 3, 1909, above referred to, and the disposition of such cases will follow the practice under that act in so far as the same is applicable.

#### APPLICATIONS.

(5) All applications to locate, select, enter, or purchase lands under this act, before being accepted and filed by you, must have written, stamped, or printed upon their face, the following: "Application made in accordance with, and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat., 509)."

Like notations will be made by registers upon the face of the notices of allowance issued on applications filed under this act.

Orders of withdrawal under the reclamation act of lands withdrawn, classified, or reported as valuable for the specified minerals with a view to passing title to the same in accordance with the terms of this act, will state that such withdrawal is made in accordance with and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat., 509).

#### FINAL CERTIFICATES AND PATENTS.

(6) Final certificates issued to nonmineral claimants under this act will contain the following provision, which you will cause to be written or stamped thereon:

Patent to contain provisions, reservations, conditions, and limitations of the act of July 17, 1914 (38 Stat., 509).

There will be incorporated in patents issued to nonmineral claimants under this act the following:

Excepting and reserving, however, to the United States all the [deposit on account of which the lands are withdrawn, classified, or reported as valuable—phosphate, oil, or other mineral, as the case may be] in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the act of July 17, 1914 (38 Stat., 509).

#### NOTATION OF RECORDS.

(7) Upon the acceptance by you of any filing under this act, you will make appropriate notation of your records to show that the filing was made under the provisions thereof; and upon the ascertainment (which will be noted of record) that the nonmineral locator, selector, entryman, or purchaser whose filing falls within the provisions of section 3 of the act, shall receive the limited patent prescribed therein, you will cause to be written or stamped on your tract books, in line with the notation of the entry and as near the description as practicable that the mineral deposits (phosphate oil, etc., as the case may be) are reserved to the United States, act of July 17, 1914. You will make a similar notation on the margin of the township plat, giving description of the land in which the deposits have been reserved.

#### RESERVED MINERAL DEPOSITS.

(8) The act provides that the deposits reserved in agricultural patents issued thereunder shall be "subject to disposal by the United States only as shall be hereafter expressly directed by law." Although provisions are made in the act for the protection of the surface owner against damage to his crops and improvements on the land by reason of prospecting for, mining, and removing such reserved mineral deposits, these provisions can have no operation or effect until further legislation by Congress shall authorize disposition of the reserved mineral deposits and define the qualifications of those who may acquire such deposits. In the meantime there is no right to prospect, and no right to acquire such deposits can be in any way initiated.

#### CLAIMANTS OF LANDS SUBSEQUENTLY WITHDRAWN.

(9) The enactment of the law itself and the publicity given to orders of withdrawal and classifications and the notation of the same upon the records of the local offices, will be sufficient notice to such nonmineral claimants as are or may be affected by withdrawals or classifications made, or which shall be made, subsequent to their locations, selections, entries, or purchases, that they must take the limited

patent prescribed by the act, upon submission of satisfactory proof of compliance with the laws under which they claim, unless the withdrawal be revoked or the classification set aside prior to the issuance of patent, or unless they show that the lands embraced in their claims are in fact nonmineral.

#### APPLICATIONS TO DISPROVE CLASSIFICATIONS.

(10) (a) The proviso to section 2 of the act allows any qualified person to present an application to locate, select, enter, or purchase, under the land laws of the United States, lands which are withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, with a view to obtaining a patent thereunder without reservation. An applicant under this proviso must submit with his application a request for a classification of the land as nonmineral, filing therewith a showing, preferably the sworn statements of experts or practical miners of the facts upon which is founded the knowledge or belief that the land applied for is not valuable for the mineral on account of which it was withdrawn or classified.

Applications to locate, select, enter, or purchase lands so withdrawn or classified, which are not filed under the provisions of section 1 of the act, and are not accompanied by request for classification as nonmineral of the land applied for, and the evidence required herein to be filed with such request, will be rejected by you, and the applicant allowed 30 days from notice within which to amend his application to take a limited patent for the land in accordance with and subject to the provisions of the act, or to file request for classification thereof as nonmineral, accompanied by the necessary evidence.

Such applications will be given proper serial numbers, noted upon your records, and forwarded, together with the request for classification and the evidence submitted therewith, to the General Land Office for action.

If upon the showing made, and such other inquiry as may be deemed proper, a restoration of the land, where withdrawn, be secured, or a reclassification as nonmineral be made, where the land has been classified, the nonmineral application, in the absence of other objection, will be returned for allowance.

If the application be denied, you will be so notified, and the applicant may, within 30 days from notice of such denial, apply to your office for a hearing to disprove the classification. When a hearing is applied for, you will notify the chief of field division and proceed therewith under the Rules of Practice. If the applicant fail to apply for a hearing within the time allowed, the application to locate, select, enter or purchase will be finally rejected.

The rejection of the application, however, will not preclude the applicant from filing application to locate, select, enter or purchase

the land in accordance with and subject to the provisions and reservations of said act.

(b) Under this proviso, persons who have located, entered, selected, or purchased lands subsequently withdrawn or classified as valuable for said mineral deposits, are allowed the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands are in fact nonmineral in character.

Claimants to whom this provision is applicable may, therefore, file in the proper local land office application for a classification of the land as nonmineral, together with the evidence prescribed herein to be filed by an original applicant with his request for classification whereupon the same will be forwarded to the General Land Office for action. If as a result thereof the land be restored to entry, if withdrawn, or classified as nonmineral, if classified, you will be so informed, in order that you may note your records and advise the claimant. If the application be denied, you will be advised thereof, and the claimant allowed 30 days from notice of such denial within which to make application to your office for a hearing to establish the nonmineral character of the land. When a hearing is applied for you will notify the chief of field division and proceed therewith under the Rules of Practice.

#### BURDEN OF PROOF.

11. Where application is made to enter, locate, or select lands withdrawn or classified as valuable for or on account of any of the minerals specified in this act and in these regulations, the burden of proof to show that said lands are not of the character of those intended to be withdrawn, or that the classification as such was and is erroneous and improper in point of fact, will rest upon and be borne by the applicant in the event that he shall undertake to establish, at a hearing ordered and held for that purpose, the truth of the allegations made by him in that behalf.

A withdrawal or classification will be deemed *prima facie* evidence of the character of the land covered thereby for the purposes of this act. Where any nonmineral application to select, locate, enter, or purchase has *preceded* the withdrawal or classification and is incomplete and unperfected at such date, the claimant, not then having obtained a vested right in the land, must take patent with a reservation or sustain the burden of showing at a hearing, if one be ordered, that the land is in fact nonmineral in character and therefore erroneously classified or not of the character intended to be included in the withdrawal. Where the agricultural claimant has completed and perfected his claim and becomes possessed of a vested right in the land which *subsequent* thereto is withdrawn or classified, the burden will rest upon the Government to show that the land is in fact mineral

in character and was so known at the date of final completion and perfection of the claim. See Charles W. Pelham (39 L. D., 201).

CLAY TALLMAN,  
*Commissioner.*

Approved:

ANDRIEUS A. JONES.

*First Assistant Secretary.*

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AN ACT To provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas or asphaltic minerals.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits, shall be subject to appropriation, location, selection, entry, or purchase, if otherwise available, under the nonmineral land laws of the United States, whenever such location, selection, entry, or purchase shall be made with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same; but no desert entry made under the provisions of this act shall contain more than one hundred and sixty acres: *Provided*, That all applications to locate, select, enter, or purchase under this section shall state that the same are made in accordance with and subject to the provisions and reservations of this act.

SEC. 2. That upon satisfactory proof of full compliance with the provisions of the laws under which the location, selection, entry, or purchase is made, the locator, selector, entryman, or purchaser shall be entitled to a patent to the land located, selected, entered, or purchased, which patent shall contain a reservation to the United States of the deposits on account of which the lands so patented were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same, such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom, and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, select, enter, or purchase, under the land laws of the United States, lands which have been withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic mineral lands, with a view of disproving such classification and securing patent without reservation, nor shall persons who have located, selected, entered, or purchased lands subsequently withdrawn, or classified as valuable for said mineral deposits, be debarred from the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands entered, selected, or located are in fact nonmineral in character.

SEC. 3. That any person who has, in good faith, located, selected, entered, or purchased, or any person who shall hereafter locate, select, enter, or purchase, under the nonmineral land laws of the United States, any lands which are subsequently withdrawn, classified, or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, may, upon application therefor, and making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which patent shall contain a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine, and remove the same.

Approved, July 17, 1914. (38 Stat., 509.)

## VILLA SITES AROUND FLATHEAD LAKE, FLATHEAD INDIAN RESERVATION.

### REGULATIONS.

DEPARTMENT OF THE INTERIOR,  
*Washington, March 20, 1915.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Under the provisions of the act of April 12, 1910 (36 Stat., 296), you are directed to cause the lots surveyed as villa sites around Flathead Lake, in the former Flathead Indian Reservation, Montana, to be offered for sale at Polson, Montana, at public outcry, under the supervision of the Superintendent of Opening and Sale of Indian Lands, at not less than ten dollars per acre, beginning on July 26, 1915, and continuing thereafter from day to day as long as may be necessary, Sundays and holidays excepted, in the manner and under the terms hereinafter prescribed.

*Manner.*—Bids may be made either in person or by agent, but not by mail nor at any time or place other than the time and place when the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show any qualifications as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of the sale, the lot awarded to him shall be re-offered for sale on the following day.

*Terms.*—Payments will be required as follows: No lot will be disposed of for less than \$10 per acre, and at least 25 per centum of the bid price of each lot sold must be paid on the date of the sale and the remainder, if the price bid is \$50 or less, within one year from the date of sale; if the price bid be over \$50 and less than \$100, 75 per centum of the cost may be divided into two equal payments due, respectively, one and two years from the date of the sale; if the price bid be \$100 or more, the 75 per centum remaining unpaid may be divided into three equal payments due, respectively, one, two, and three years from the date of sale. No entry will be allowed until

payment has been made in full for the lot, but in case of partial payment the register will issue a nontransferable memorandum duplicate certificate showing the amount of the bid and the terms of the sale, and reciting the right of the purchaser to make entry upon completing the payments; the receiver in such case will issue a memorandum receipt for the money paid. Nothing herein will prevent the transfer of the interests secured by the purchase and the partial payment of the lot, by deed, but the assignee will acquire no greater right than that of the original purchaser and the final entry and patent will issue to the original purchaser when all payments are made. All lots affected by the easement provided for in the act of August 24, 1912 (37 Stat., 527), as shown upon the approved plats of said lots, will be sold subject to said easement.

*Forfeiture.*—If any person who has made partial payment on the lot purchased by him fails to make any succeeding payment required under these regulations at the date such payment becomes due, the money deposited by such person for such lot will be forfeited and the lot, after forfeiture is declared, will be subject to disposition as provided in said act. Lots remaining unsold at the close of sale, or thereafter declared forfeited for nonpayment of any part of the purchase price under the terms of the sale, will be subject to future disposition at public sale at such time and place as may thereafter be provided.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under Section 2373 of the Revised Statutes of the United States, which reads as follows:

Every person who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree, with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or who by intimidation, or unfair management, hinders or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

The Superintendent of the Opening and Sale of Indian Lands will be, and he is hereby, authorized in his discretion, to fix for any lot a greater minimum price per acre than ten dollars, and he may reject any and all bids for any lot and at any time suspend, adjourn, or postpone the sale of any lot or lots to such time and place as he may deem proper.

Very respectfully,

A. A. JONES,  
*First Assistant Secretary.*

## GEORGE N. BENSON ET AL.

*Decided March 22, 1915.*

## PRACTICE—DEPOSITION—PRESENCE OF WITNESS AT HEARING.

The deposition of a witness taken under Rule 20 of Practice is not admissible in evidence where the witness himself is actually present at the hearing and is ready and able to testify.

JONES, *First Assistant Secretary*:

Daniel B. Bowersox, Mary J. Bowersox and Fannie Bush have appealed from the decision of January 2, 1915, in the above-entitled cause holding for cancellation homestead entry 05816, made November 5, 1909, by George N. Benson for the SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$  and NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  Sec. 19, T. 96 N., R. 74 W., Gregory, South Dakota. The action appealed from affirmed that of the register and receiver.

The adverse action appealed from is the result of a hearing on charges made against said entry to the effect that the entry was not made for the use and benefit of the entryman, George N. Benson, but was made for the use and benefit of Daniel B. Bowersox, Mary J. Bowersox and Fannie Bush, and other persons whose names were to the United States unknown.

The depositions of George N. Benson and one Gangloff were taken in Springfield, Missouri, upon affidavit that these parties resided at that place, being more than 50 miles from the office of the register and receiver in South Dakota. No other testimony was introduced on the part of the Government.

The Commissioner sets forth the testimony as given in these depositions and also the testimony of appellants herein, one of whom, Fannie Bush, is a transferee of the land after certificate duly issued. The facts as found by the Commissioner justify the action appealed from but it is insisted that the deposition of Benson should not have been received in evidence, for the reason that Benson was present at the hearing before the register and receiver as shown by the testimony in the case. In appealing from the action of the register and receiver it was then insisted, and that contention is brought forward in this appeal, that Benson's deposition should not have been received. The register and receiver overruled the motion to suppress that deposition. The Commissioner made no allusion whatever to the point raised on appeal, apparently holding that such testimony should be accepted at its full worth.

It may be said in general that the only testimony, if testimony at all, pertinent to the case was given by Benson. The other witness, Gangloff, knew nothing as to the allegation that Benson had made

the entry in the interest of Bowersox and others. It follows that if the deposition of Benson should not have been received, the Government failed to sustain the charges as hereinafter fully shown.

The deposition of Benson was taken at Springfield, Missouri, under practice rule 20, which provides that testimony may be taken by deposition when it appears that—

(a) The witness resides more than 50 miles, by the usual traveled route, from the place of trial.

(b) The witness resides without, or is about to leave, the State or Territory, or is absent therefrom.

(c) From any cause it is apprehended that the witness may be unable to, or will refuse to, attend the hearing, in which case the deposition will be used only in the event personal attendance of the witness can not be obtained.

In the case of *Whitford v. Clark Co.* (119 U. S., 522), where a deposition had been taken *de bene esse* under section 863 of the Revised Statutes, a witness, whose deposition had been taken, was actually present in court, ready and able to testify when the case was called. In reversing the action of the lower court, which allowed said deposition to be read in evidence, the court said:

While the witness lived more than one hundred miles from the place of trial when his deposition was taken, he was actually in court, ready and able to testify when his testimony was needed at the trial. His deposition, therefore, was not admissible. The rulings of the circuit courts have uniformly been the same way, so far as we know.

The Commissioner calls attention to the fact that Benson and his wife and Fannie Bush were indicted in the United States Court for the District of South Dakota and pleaded guilty for alleged fraudulent transactions. It appears from the evidence that there were other charges than the one relating to the Benson entry. It is also in evidence that the District Attorney trying the case agreed to accept the plea of guilty on one count of the indictment and dismissed all the others, some seven or eight in number. Whether Bowersox, his wife, and others pleaded guilty to the charge that they had induced Benson to make a false and fraudulent entry for the land in question, can not here be determined. No record was introduced of the criminal proceedings in the court and there is nothing to show on what particular count of the indictment these parties pleaded guilty. It follows that if the deposition of Benson, for reasons above given, could not be legally accepted in evidence, there is no testimony in the record which sustains the charge that these parties were guilty of inducing Benson to make the fraudulent entry in question.

The action appealed from is reversed and the case is remanded for a new hearing in accordance with the views hereinabove expressed.

## STANDING ROCK LANDS—SCHOOL LANDS.

## INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., March 23, 1915.*

REGISTERS AND RECEIVERS,  
*United States Land Offices,  
Bismarck, North Dakota,  
Lemmon and Timber Lake, South Dakota.*

SIRS: The act of Congress approved February 14, 1913 (37 Stat., 675), makes provision for the sale and disposition of the surplus and unallotted lands in the Standing Rock Indian Reservation in the States of North Dakota and South Dakota. Section seven thereof reads as follows:

SEC. 7. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the States of South Dakota and North Dakota, respectively, for such purposes, and in case any of said sections or parts thereof are lost to either of the said States by reason of allotments thereof to any Indian or Indians or otherwise, the governor of each of said States, respectively, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section one of this act, to locate other lands not otherwise appropriated, not exceeding two sections in any one township, which shall be paid for by the United States, as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

The President, in proclamation of March 18, 1915, names May 19, 1915, as the first day for making entries under the provisions of said act, and that date must be considered, for the purpose of State selection, as the date of the opening of the lands to settlement.

Selections may be made on the forms used by the States for the selection of indemnity school lands, so modified as to indicate that same are made under the provisions of aforesaid act of February 14, 1913, and need not be accompanied by affidavits showing the character and condition of the land. Not more than two sections (1280 acres) of land may be selected in any one township.

In view of the fact that claims to these lands by allotment are record claims, and that the unallotted lands will not be subject to homestead settlement during the period within which the States are authorized to exercise the right of selection, the requirement of publication of notice of the selections is waived, and, as the tracts to be used as bases for selection are lost to the States by reason of allotments to Indians, or otherwise, no certificates of county officers, showing nonsale and nonencumbrance, by the States, of such tracts

need be furnished. Lands must be selected in the State wherein the loss occurs.

The lists of selections, filed by the States and accepted by you, will be given proper serial numbers and will be transmitted to this office in special letters. Care must be taken to place notations showing the fact and date of transmittal in each case, in the column for remarks in the "Schedule of Serial Numbers," for the month in which the lists are accepted and transmitted.

Certain of the unallotted lands were withdrawn January 4, 1912, under the provisions of section 13 of the act of June 25, 1910 (36 Stat., 855), for a reservoir site. Lands so withdrawn are considered as appropriated within the meaning of said section 7, act of February 14, 1913, and, therefore, not subject to selection.

The State of South Dakota has selected lands outside the reservation boundaries in lieu of a considerable portion of the sections 16 and 36 within such boundaries, which selections have not received departmental approval. Should it be now desired to select lands within the reservation, in lieu of allotted school section lands, the selection heretofore made in lieu of the same lands must be relinquished.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved, March 23, 1915:

A. A. JONES,  
*First Assistant Secretary.*

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**WILLIAM C. LONG.**

*Decided March 27, 1915.*

**PUBLIC SALE—EXCESS ACREAGE—OPTION OF PURCHASER.**

Where a tract of land was sold at auction, as a whole, as containing a specified number of acres, and the purchaser at such sale bid for and purchased the tract at so much per acre, relying upon the statement of the superintendent of the sale as to the number of acres it contained, and it subsequently developed that the tract contains an excess acreage beyond any reasonable contingency and wholly beyond the contemplation of the parties, the purchaser has the option of paying for the excess acreage or having the sale rescinded with the privilege of applying for repayment of the purchase money.

JONES, *First Assistant Secretary:*

William C. Long has appealed from decision of November 7, 1914, in the above entitled case, holding his cash entry, made under the act of June 30, 1913 (38 Stat., 92), for lot 2 of tract 368, in section 20, T. 2 N., R. 11 W., Guthrie, Oklahoma, land district, being all of the SE.  $\frac{1}{4}$  of said section east of Cache Creek, for cancellation on the ground that said lot contains 11.05 acres more than as offered for sale, subject to the payment by said Long within 30 days from notice, of \$187.85,

being the required one-fourth advance payment for said 11.05 acres, at the rate of \$68 per acre, the amount of his bid.

These lands were surveyed in the field between December 10 and 18, 1913, and plat of survey was accepted September 28, 1914. Said plat shows said lot contains 62.36 acres. The sale was had in December, 1913, while the survey was being made, and the superintendent of sale, after consultation with the surveyor, sold said lot 2 as containing 51.31 acres, Long bidding \$68 per acre, as stated, and he paid December 12, 1913, \$873.55, being one-fourth of the total sum for which said lot was sold at that rate, with commissions amounting to \$1.28. Said sale was made in accordance with regulations (42 L. D., 604) providing for the sale of the several tracts as numbered in a schedule prepared for such sale.

Long contends in this appeal that he made his bid in reliance upon the statement made by the superintendent of sale that this tract embraced 51.31 acres, and that he should be allowed to complete the sale for that amount of land or else have the sale rescinded altogether and the purchase money paid by him refunded.

It is apparent that this was a sale of land in gross and of a defined and located tract, and sold not merely as supposed to contain 51.31 acres, or as containing more or less than that acreage, but as containing exactly that number of acres. It was clearly a mistake, made innocently on the part of the Government, and for which the purchaser appears to have been in no way responsible. He can not be forced to complete such a sale if the excess is unreasonable, or is more than might be reasonably calculated on as within the range of ordinary contingencies. *Grundy's Heirs v. Grundy* (12 B. Mon., 269.)

The rule is laid down in the leading case of *Harrison v. Talbot* (2 Dana (Ky.), 258), with reference to such sales—

In which it is evident from extraneous circumstances of locality, value, price, time, and the condition and conversation of the parties that they did not contemplate or intend to risk more than the usual rates of excess or deficit in similar cases or than such as might be reasonably calculated on as in the range of ordinary contingencies.

This case was followed in the case of *O'Connell v. Duke* (29 Texas, 299), wherein it is stated—

The inquiry is first to be made whether the parties have made a mistaken estimate of the quantity which materially influenced the price, and then whether, notwithstanding such mistaken estimate, they have waived the right to complain by an acceptance of the hazard of greater or less by the estimate. When the excess or deficit is palpable and unreasonable and such as is shown not to have been in the contemplation of the parties relief will be granted, unless the proof shows that the hazard of greater or less, whatever it might be, was accepted and entered into the contract.

It was held further, however, in the case of *Pharr v. Russell* (7 Ired., 222), that—

Quantity is an important consideration in every sale and purchase; and it is natural that parties should contract with reference to it, and that circumstance may become

material with others in order to ascertain the true intention of the parties; and if quantity clearly appears to have entered essentially into the treaty, and that the parties meant to contract for the land as containing a certain quantity, and not as supposed to contain it, or thereabouts, and it turned out to be less or more, a court of equity, though there be no fraud, ought to relieve either party upon the ground of surprise and a mistake of all the parties.

It is manifest that the sale in this case was of a tract as containing a specified acreage, and the excess above such acreage is more than 21 per cent, wholly beyond the contemplation of the parties, and beyond any reasonable contingency. In this case, the Government can, on its part, only rescind the sale, while the purchaser, on his part, has the option of accepting such rescission, or of paying a reasonable price for the excess.

*Pratt v. Bowman* (37 West Virginia, 715).

This sale is, therefore, hereby rescinded, as it appears from Long's appeal, he does not desire to pay for the excess acreage. If he desires return of the payment made by him on account of this purchase, he should file in the General Land Office proper application therefor, which will receive due consideration.

The decision appealed from is modified in accordance with the foregoing.

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## PLACER LOCATIONS ON PHOSPHATE LANDS—ACT OF JANUARY 11, 1915.

### REGULATIONS.

[No. 396]

DEPARTMENT OF THE INTERIOR,  
*Washington, March 31, 1915.*

REGISTERS AND RECEIVERS,

*United States Land Offices.*

SIRS: Your attention is directed to the act of Congress approved January 11, 1915 (Public, No. 230), copy appended, entitled—

An act validating locations of deposits of phosphate rock heretofore made in good faith under the placer mining laws of the United States.

The act applies only to placer mining locations made on lands containing deposit of phosphate rock. It prescribes that phosphate placer locations made in good faith prior to the passage of the act, and prior to the withdrawal of such lands from location, upon which assessment work has been annually performed, shall be valid and may be perfected under the placer mining laws, except as to lands included in an adverse or conflicting lode location. It authorizes the issuance of patents for such locations, where the provisions of the mining laws in other respects have been complied with.

In addition to the usual proofs, claimants, under all pending and future applications based on such validated locations must submit

evidence showing that the assessment work has been annually performed up to and including the year preceding that in which the entry certificate is issued. Such proof may be made by filing the original or authenticated copies of the proofs of annual labor of record in the local recording office, provided such proofs are definite and specific. Where such evidence is not available, a sufficient corroborated affidavit describing the nature and giving the approximate cost and reasonable value of the work done each year upon, or for the benefit of, each claim included in the application for patent, will be accepted. Similar proof must be furnished in support of all pending cases where the entry certificates are outstanding, before such entries will be approved for patent, all else being regular.

The act does not apply to lands included in an adverse or conflicting lode location, unless such adverse or conflicting claim is abandoned. The usual statutory notice of the application must have been or will be given in all cases. Section 2325, Revised Statutes, provides that if no adverse claim is filed during the sixty days of publication "it shall be assumed that the applicant is entitled to a patent . . . and that no adverse claim exists."

Where proper statutory notice has been given and no adverse claim or protest has been filed, it will be conclusively assumed, for patent purposes, that no adverse or conflicting lode location exists; and that if any such once existed, it has been abandoned. No new notice, if the notice already given be found regular and sufficient, will be required in support of any pending entry or application.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved, March 31, 1915:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

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[PUBLIC—No. 230.]

An act validating locations of deposits of phosphate rock heretofore made in good faith under the placer-mining laws of the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where public lands containing deposits of phosphate rock have heretofore been located in good faith under the placer-mining laws of the United States and upon which assessment work has been annually performed, such locations shall be valid and may be perfected under the provisions of said placer-mining laws, and patents whether heretofore or hereafter issued thereon shall give title to and possession of such deposits: Provided, That this act shall not apply to any locations made subsequent to the withdrawal of such lands from location, nor shall it apply to lands included in an adverse or conflicting lode location unless such adverse or conflicting location is abandoned.*

Approved, January 11, 1915.

**NELSON J. LITTLEJOHN.**

*Decided April 2, 1915.*

**COAL LAND—TIMBER AND STONE ENTRY—SURFACE PATENT.**

A showing by a timber and stone applicant, as required by the act of June 3, 1878, that the land applied for contains no valuable deposit of gold, cinnabar, silver, copper, or coal, constitutes merely *prima facie* evidence of the nonmineral character of the land; and where the land was, prior to the timber and stone entry, and prior to the act of June 22, 1910, withdrawn as coal land, and has since been held, as the result of a hearing, to be coal in character, the timber and stone entryman is entitled only to a restricted patent under the proviso to section 1 of said act of June 22, 1910.

**JONES, First Assistant Secretary:**

This is an appeal by Nelson J. Littlejohn from the decision of the Commissioner of the General Land Office of February 26, 1912, finding and holding lots 1 and 2, and the E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 30, T. 8 N., R. 26 E., M. P. M., Lewistown, Montana, land district, embraced in his timber and stone entry 01774, to be coal in character, and requiring him to take a restricted patent pursuant to the provisions of the act of June 22, 1910 (36 Stat., 583).

The public lands in the township above described were, by departmental order of October 15, 1906, as later modified, withdrawn from coal entry, and by the Commissioner's letter of May 8, 1909, the area in question was classified as coal land, and appraised at the following prices: lot 1, \$60 per acre; lot 2 and the E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , \$35 per acre.

The declaratory statement of Littlejohn was filed January 29, 1908, more than fifteen months after the withdrawal of the land, and nearly nine months after the issuance of the departmental circular of April 24, 1907 (35 L. D., 681), requiring that lands so withdrawn be noted upon the tract books of local offices as "coal lands." Proof was submitted by Littlejohn April 13, 1908, upon which final certificate issued on the 15th of the same month.

By letter of November 13, 1909, the Commissioner directed that a hearing be ordered to determine—

- (1) Whether said land is chiefly valuable for coal;
- (2) Whether, at the date of final proof it was actually known to be chiefly valuable for coal, or its comparative location or surface indications were such as to put upon notice an ordinarily prudent man as to its coal character and chief value therefor;
- (3) Whether, at the time of making final proof, the claimant knew the land to be chiefly valuable for coal, and
- (4) Whether, at the time of initiation of claim, claimant was endeavoring to secure the land in good faith under the nonmineral land laws.

From the evidence adduced at the hearing ordered pursuant to said instructions, and had January 27, 1910, the local officers found and held that the Government had failed to show that the area is underlain by a deposit of merchantable coal, and accordingly recom-

mended that the proceedings be dismissed. Upon a review of the record, however, the Commissioner, in the decision here appealed from, found the land to be coal in character, but held that the entry having been made prior to the act of June 22, 1910, *supra*, for land withdrawn as coal land, the claimant is entitled to receive the limited patent provided for in that act and accordingly directed that such patent be issued to him.

Appellant contends that in compliance with the provisions of the act of June 3, 1878 (20 Stat., 89), having filed a written statement to the effect, among other things, that he verily believed the land contained no valuable deposit of gold, cinnabar, silver, copper, or coal; and having submitted evidence that it apparently contained no valuable deposits of any of said minerals, and complied with all other essential requirements of the act, he is entitled to an unrestricted patent to the tract regardless of the fact that it may have been known to be valuable for coal at the date of his entry.

It is to be noted, however, that by section 1 of the act it is provided that nothing therein contained shall authorize the sale of any lands containing gold, silver, cinnabar, copper, or coal, and it clearly did not contemplate that the known coal character of a tract sought to be entered thereunder should be definitely and positively established by the mere belief of an applicant or by proof of conditions that were apparent only to such declarant and his final proof witnesses. Such proof at most constitutes but *prima facie* evidence of the nonmineral character of a tract, leaving its real character, if questioned, to be determined, as in other cases, as the result of proceedings ordered and had for that purpose.

It is further urged by the claimant that he is entitled to an unrestricted patent under the second proviso to the act of March 3, 1909 (35 Stat., 844), which reads in part as follows:

Such locator, selector or entryman who has heretofore made or shall hereafter make final proof showing good faith and satisfactory compliance with the law under which his land is claimed shall be entitled to a patent without reservation unless at the date of such final proof and entry it shall be shown that the land is chiefly valuable for coal.

The term such locator, selector or entryman, used in the act relates only to the classes of persons previously described therein, to wit, those who had—

in good faith located, selected, or entered, under the nonmineral land laws of the United States, any lands which subsequently are classified, claimed, or reported as being valuable for coal.

The tract here in question was, as before stated, at the date of Littlejohn's application, embraced in an order of withdrawal for coal classification purposes. Such a withdrawal is of itself equivalent to a claim or report that a tract embraced therein is coal in character. Moreover, lands so withdrawn were required by departmental cir-

cular above referred to to be noted upon the tract books of the local office as "coal lands."

Besides, it appears from the records of the General Land Office that on May 19, 1906, one John W. Blee filed a coal declaratory statement for the identical tract here in question, and on March 6, 1907, applied to purchase the same under the coal land laws, alleging in his application "that the same is chiefly valuable for coal." This averment was corroborated by George McCleary, who was one of the witnesses on behalf of the Government in the present proceeding, and Albert O. Morris, each of whom swore that:

I am well acquainted with the character of said described lands, and with each legal subdivision thereof, having frequently passed over the same, and that my knowledge of said lands is such as to enable me to testify understandingly with regard thereto and that the same contains large and valuable deposits of coal, and that the same is chiefly valuable for coal.

Payment for the tract was made by Blee at the rate of \$10 per acre, but the application was rejected by the local officers for the reason that Blee had failed to show that a mine of coal had actually been opened on the land and a preference right to enter the same acquired prior to its withdrawal from coal entry by the departmental order of October 15, 1906.

The land having thus been claimed or reported as being valuable for coal prior to the filing of the application of Littlejohn, his rights with respect thereto are not entitled to be adjudicated under the act of March 3, 1909. So long, therefore, as the classification of the area as coal land stands, Littlejohn is entitled to a patent, if at all, only under the proviso to section 1 of the act of June 22, 1910, which reads as follows:

That those who have initiated nonmineral entries, selections, or locations in good faith, prior to the passage of this act, on lands withdrawn or classified as coal lands may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act.

In this connection see departmental instructions of February 5, 1912 (40 L. D., 418).

From the evidence adduced at the hearing it appears that the land lies about a mile and a half to the southeast of a coal mine which, at the date of the application and entry, had been opened up, on a deposit of commercial coal known as the Roundup bed, at that place more than six feet in thickness; that this bed is also exposed at a point about a mile to the west of the mine; that the formation overlying the bed at the mine extends from the mine to and beyond the land in question and is regular and undisturbed; that George J. McCleary, a witness for the Government, made coal entry in June, 1907, of the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , and SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 24, T. 8 N., R. 25 E. (which tract adjoins on the south the tract upon which the coal mine above referred to is situated, and is but little more than a half

a mile to the northwest of this land), after drilling operations thereon had disclosed the presence of a six foot bed of coal; that George McCleary, the father of George J. McCleary, at the same time made coal entry of the N.  $\frac{1}{2}$  S.  $\frac{1}{2}$  of said Sec. 24, the southeast corner of which area is but a quarter of a mile to the north of the tract in controversy; that both of the McClearys, who were engaged in drilling and otherwise investigating coal deposits and formations in the vicinity of the land, had reported "on theory" that the land was valuable for coal; that in the early part of 1908, one Marcus Klein, who owned Sec. 36, T. 8 N., R. 25 E., the northeast corner of which is but half a mile to the south of the southwest corner of the present tract, sold the subsurface rights thereto to the Republic Coal Company for about \$15 per acre, and that a mine of coal has since been opened upon said section.

The Department is of opinion that this evidence sufficiently establishes the coal character of the tract.

The appeal is accompanied by an alternative motion for new trial, on the ground of newly-discovered evidence, based upon certain affidavits filed for a like purpose in the case of Albert A. Morris, involving a timber and stone filing for the SE.  $\frac{1}{4}$  of said Sec. 30. one of said affidavits is executed by the above mentioned George J. McCleary, who avers that in July, 1907, a drill hole was sunk by him to a depth of 517 feet at a point near the south line of the SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  of said Sec. 30, which would be between a quarter of a mile and a half a mile to the east of the southeast corner of the present tract; that this hole was drilled to a sufficient depth to penetrate any valuable bed of coal in that vicinity; that the only deposit of coal exceeding 6 inches in thickness that was penetrated was the Roundup bed, which was encountered at a depth of 512 feet and was there but 2 $\frac{1}{2}$  feet in thickness; that coal less than 3 feet in thickness (one of the affiants puts the minimum at 4 $\frac{1}{2}$  feet) can not, under present conditions, be mined in the vicinity of the land.

If, as is averred by McCleary, the hole drilled by him at a point from one-quarter to one-half a mile to the east of the southeast corner of the tract in question penetrated the Roundup bed, there can be no question that said bed underlies the land. It would seem also in view of the further averment by McCleary that the coal bed had a thickness of 2 $\frac{1}{2}$  feet at the point where the drill hole was sunk, and of the fact as disclosed by the evidence herein that the said bed has a thickness of 6 feet or more at a point near the center of Sec. 24, T. 8 N., R. 25 E., the southeast corner of which section is common to the northwest corner of the tract here involved, that, assuming the decrease in thickness of the bed between the points named to be uniform, the thickness of that portion of the bed underlying the tract would be approximately from 3 to 4 feet. The coal of the Roundup

bed is shown from an analysis made thereof by the United States Geological Survey (see Bulletin No. 381, page 79) to have a heat value of from 10,000 to 11,340 B. t. u. Under the regulations for the classification and valuation of public coal lands approved by the Secretary, February 20, 1913, which are explained in Bulletin No. 537 of the Geological Survey at pages 65, 79, a tract underlain by a bed of coal having a calorific value of 10,000 B. t. u., 2 feet in thickness, occurring at a depth not to exceed 825 feet, would as shown on page 75 of said bulletin be classified by the Department as coal land. The affidavit of McCleary, therefore, tends to support rather than disprove the coal classification of this tract, and in determining whether a tract is or is not coal land the Department will be guided by its coal classification regulations as to the workability of a deposit of coal occurring on such tract. The showing made, therefore, does not afford a sufficient basis for new trial.

The decision appealed from is accordingly affirmed and motion for new trial denied.

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### VANCE v. SKEEN.

*Decided April 2, 1915.*

#### HOMESTEAD ENTRY—QUALIFICATION—OWNERSHIP OF LAND.

A deed is not effective until delivery; and where an intending homestead entryman executes deeds for land owned by him in excess of 160 acres, and makes entry before the deeds are delivered, such entry is invalid because of the disqualification of the entryman by ownership of more than 160 acres of land.

JONES, *First Assistant Secretary*:

Lafayette Skeen appealed from decision of January 15, 1915, awarding to David Vance the prior right of homestead entry for NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 17, SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 18 (with other land), T. 11 S., R. 32 E., B. M., Blackfoot, Idaho, land district.

Official plat of township survey was filed in the local office at 9 a. m., December 15, 1913, on which day Skeen applied for second homestead entry under act of February 3, 1911 (36 Stat., 896), for N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 17, SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 18, said township; at the same time, David Vance filed homestead application for SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 17, E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 18. Owing to conflict as to the NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 17, and SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 18, hearing was had at the local office to determine the rights of the rival parties. June 30, 1914, the local office recommended Vance's application be allowed and that Skeen's be rejected, as to the land in conflict. The Commissioner affirmed that action.

Skeen filed, at the hearing, a verified possessory claim, dated March 4, 1910, recorded March 7, that year, of settlement right upon 160 acres in square form, described as:

Commencing at a post marked "A" which is located at a point of rocks about 15 rods northwest of Big Canyon Spring, supposedly in Tp. 11 S., R. 32 E.; thence

running east 160 rods; thence south 160 rods; thence west 160 rods; thence north 160 rods to place of beginning.

His homestead application did not conform to his declaration of settlement on unsurveyed land. In his homestead application, he alleged settlement March 4, 1910, with continuous improvement and cultivation thereafter and expenditure of \$350, placing on the land a house, corrals, reservoir, and plowing three-fourths of an acre.

December 23, 1913, Vance filed an uncorroborated affidavit, charging that Skeen's claim of cultivation and improvement were fraudulent and further that at the time of Skeen's application he was the owner of more than 160 acres of land in the same land district, to wit, 550 acres. It was stipulated that the applications for entry were filed simultaneously. There was no evidence that Skeen had expended \$350, or any other sum, in improving the land. There was neither house, reservoir, corrals nor plowed land. Skeen also admits that the morning he filed his homestead application he made two deeds, conveying to his wife 560 acres of land which he had theretofore owned. A few moments after making these deeds, he filed his homestead application. The evidence shows his wife was not with him when these deeds were made but was residing eighty miles away. A deed is not effective until delivery, and it is clear that he was disqualified by ownership of a greater amount than 160 acres at the time of his homestead application. Irrespective of this there was no evidence of settlement or improvement upon the land.

The decision is correct and is affirmed.

## AMENDMENTS OF PARAGRAPHS 49 AND 85 OF MINING REGULATIONS.

### REGULATIONS.

[No. 398.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, April 9, 1915.*

UNITED STATES SURVEYORS GENERAL and  
REGISTERS AND RECEIVERS,

*United States Land Offices.*

SIRS: Under date of December 16, 1914, paragraph 49 of the Mining Regulations, approved March 29, 1909 (37 L. D., 768), was amended by the Department to read as follows:

49. The surveyor general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from the mineral surveyor who actually makes survey and examination of the premises, in so far as such matters rest in the personal knowledge of the mineral surveyor. The mineral surveyor should specify with particularity and full detail the character and extent

of such improvements. As to when and by whom the improvements were made and other essential matters not within such mineral surveyor's personal knowledge, recourse may be had by the surveyor general to corroborated affidavits by persons possessing such personal knowledge or the best evidence in this behalf otherwise obtainable. This showing should accompany the report of the mineral surveyor as to improvements.

Paragraph 85 of said regulations (37 L. D., 774) is hereby amended to read as follows:

85. Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession it will not be sufficient to file with the register a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes, and a certificate of the clerk of the court, under the seal of the court, showing, in accord with the record facts of the case, that the judgment mentioned and described in the judgment roll aforesaid is a final judgment, that the time for appeal therefrom has under the law expired, and that no such appeal has been filed or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved:

A. A. JONES,  
*First Assistant Secretary.*

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ANTON O. THURAS.

*Decided April 10, 1915.*

PAYMENT UNDER TIMBER AND STONE ACT—SUPREME COURT SCRIP.

The timber and stone act contemplates that payments thereunder shall be made in lawful money of the United States; and in the absence of positive statutory authority therefor, Supreme Court scrip, not being legal tender, may not be accepted in payment for lands under that act.

JONES, *First Assistant Secretary:*

February 27, 1913, certificate issued to Anton O. Thuras upon his timber and stone entry 010033, under the act of June 3, 1878 (20 Stat., 89), for the E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 9, T. 66 N., R. 22 W., 4th P. M., Duluth, Minnesota, land district. The claimant tendered in payment for the land Supreme Court scrip, or certificate, No. R-554, for 160 acres, issued by the Commissioner of the General Land Office March 21, 1878, under the provisions in act of June 22, 1860 (12 Stat., 85), as extended by the acts of March 2, 1867 (14 Stat., 544), and June 10, 1872 (17 Stat., 378), and by virtue of the decree of January 28, 1878, by the Supreme Court of the United States, upon the claim of Charles B. Bouigny *et al.*

By decision of the Commissioner of the General Land Office of June 30, 1913, after statement of facts, it was held:

That there is no authority for the use of Supreme Court scrip in payment for timber and stone claims initiated under the act of June 3, 1878, and the amendment thereof, of August 4, 1892 (27 Stat., 384)—

and the local officers were directed to notify Thuras, or any other party in interest, that 30 days from notice were allowed within which to make substitution in lieu of Supreme Court scrip 554-R, by cash or surveyor-general scrip, or military bounty land warrants in payment for the land; and that if such substitution is not made, nor appeal taken, the patent certificate issued February 27, 1913, will be canceled without further notice, and the timber and stone proof stand rejected.

From this decision Thuras has appealed to the Department. The only question presented upon this appeal is whether or not Supreme Court scrip can be received in payment upon timber and stone purchase. Two briefs are filed in support of this appeal, in one of which it is claimed that the right to so use Supreme Court scrip is recognized in instructions of April 30, 1909 (37 L. D., 617). An examination of such instructions discloses a distinct provision that military bounty land warrants and surveyor-general scrip may be so used—referring to act of December 13, 1894 (28 Stat., 594), which distinctly so provides; but no authority is found in such regulations for such use of Supreme Court scrip. In the other brief filed in support of this appeal, errors are alleged in holding that the act of December 13, 1894 (28 Stat., 594), does not provide for the use of Supreme Court scrip in the payment for lands under the timber and stone law. It is clearly evident, from reading said act that no such provision for the use of Supreme Court scrip is found therein. Said second brief alleges further error—

In holding that the Supreme Court scrip offered by appellant for the purchase of the land involved is not in fact an unsatisfied indemnity certificate of location within the contemplation of said act of December 13, 1894, *supra*.

The language of said act, upon which such contention is made, is—

Unsatisfied indemnity certificates of location, under the act of Congress approved June second, eighteen fifty-eight, whether heretofore or hereafter issued, shall be receivable at the rate of one dollar and twenty-five cents per acre, in payment, or part payment of lands entered under . . . the timber and stone law.

It therefore depends upon the language found in said act of June 2, 1858 (11 Stat., 294), as to what is included in the description of unsatisfied indemnity certificates of location. A careful examination of said act discloses that the language thereof can in no wise be construed to include Supreme Court scrip, and this contention by appellant is, therefore, untenable.

The payments required to be made under the timber and stone act, *supra*, must clearly be made in lawful money of the United States; and while it is conceded that the Supreme Court scrip tendered by Thurs in this case is a valid and subsisting obligation of the United States, it is not legal tender for a purchase made under the timber and stone law, unless so provided by positive statutory enactment. No such statute is pointed out by appellant, and no authority for the use of such scrip in payment for timber and stone purchase exists. It follows that the decision of Commissioner is correct, and it is affirmed.

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## RELIEF OF DESERT-LAND ENTRYMEN—ACT OF MARCH 4, 1915.

### REGULATIONS.

[No. 399.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., April 13, 1915.

REGISTERS AND RECEIVERS,  
*United States Land Offices.*

SIRS: Annexed hereto is a copy of the last three paragraphs of the fifth section of an act of Congress approved March 4, 1915 (Public, No. 296), entitled, "An act making appropriations to supply deficiencies in appropriations for the fiscal year 1915 and for prior years, and for other purposes," the provisions of which authorize the Secretary of the Interior, under rules and regulations to be prescribed by him, to grant relief to certain classes of desert-land entrymen. The following rules and regulations are, therefore, prescribed to be observed in the administration of the said provisions.

### APPLICATIONS FOR RELIEF.

(1) All applications for the benefits of the new law should be filed prior to the expiration of the time within which the applicant would otherwise be required to make final proof on his desert-land entry, in the land office for the district in which the entered land is situated, to be forwarded, with appropriate recommendations, to the Commissioner of the General Land Office for action. They must be supported by the affidavit of the applicant, corroborated by two witnesses, as to the material facts necessary to be shown. All such affidavits must be executed before an officer authorized to administer oaths in desert-land cases.

(2) All such applications should contain the name of the entryman and the date of the entry, and, if the entry has been assigned, the name of the assignee and date of the assignment; the description of the land

involved; a statement of the various sums of money expended by the applicant or his grantors in an endeavor to reclaim the land, and the particular purpose for which each sum was expended; the facts by reason of which it has been impossible for claimant to effect reclamation and cultivation and to submit final proof within the usual period, or such extensions thereof as may have been granted; and the facts by reason of which the applicant considers that there is or is not, as the case may be, a reasonable prospect that, if an extension of time is granted him, he will be able to secure a sufficient water supply and make final proof of reclamation, irrigation, and cultivation, as required by the desert-land law.

#### CONDITIONS FOR EXTENSION OF TIME.

(3) To entitle an entryman to the benefits of the first of the three paragraphs referred to, the following conditions must exist: (a) The entry must be a lawful, pending entry made prior to July 1, 1914; (b) the entryman must have complied with the requirements of the desert-land law with reference to yearly expenditures and the submission of annual proofs thereof; (c) there must be a reasonable prospect that, if an extension of time is granted, the claimant will be able to make the final proof of reclamation, irrigation and cultivation, as required by law; (d) the case must be one on which an extension of time, or a further extension, can not properly be allowed under other laws; and (e) there must be established some fact or facts constituting a reasonable excuse for the applicant's failure to comply with the law within the usual time, and fairly entitling him, in justice and equity, to this form of relief.

(4) The existence of the first two of these conditions can be determined by examination of the records of the General Land Office, but in order that applicants may have the benefit of every possible circumstance entitling them to equitable consideration, they are privileged to make such further showing as they may desire as to any moneys which they may have expended in improving the land but not used as the basis of annual proof.

The existence of the third, fourth, and fifth conditions above enumerated must be established in all cases by the affidavits filed in support of the application for relief.

(5) With regard to the third condition, it must be shown what steps the applicant has taken to secure a water right; and either that he has secured such a right (so far as that is possible, under the State laws, in cases where beneficial application of the water to the land has not yet been made), or that there is no reason to doubt that he will be able to secure such a right before his final proof is due; that the source of water supply, if a natural stream, will, in ordinary

seasons, furnish the amount of water needed by the claimant to reclaim the irrigable land in his entry after all appropriations prior to his have been satisfied; and, if water is to be taken from wells, that there is reason to believe that an adequate supply can be obtained from that source.

If water is to be obtained through an irrigation company or irrigation district upon which a special agent or other officer has made a favorable report, and favorable action on such report has been taken, the existence of the third condition will be taken for granted, provided the applicant shows that he has become the owner of the required amount of stock in the company, or taken the required steps to secure the inclusion of the land in the district, or that it will be entirely possible for him to do the one or the other, as the case may be.

If an adverse report has been made on the irrigation company or district, or if adverse action thereon has been taken, the applicant may present such showing of facts as may tend to refute the findings made and the conclusions reached, whereupon, if the allegations seem to warrant such action, a hearing will be ordered to determine the merits of the case.

The fourth condition above enumerated will be satisfied if the case does not come within the terms of any general or special acts of Congress providing for the allowances of extensions of time for submitting final proof on desert land entries. The general acts are the following: June 27, 1906 (34 Stat., 519, sec. 5); March 28, 1908 (35 Stat., 52, sec. 3); and April 30, 1912 (37 Stat., 106). The principal special acts referred to are the following: February 28, 1911 (36 Stat., 960); January 26, 1912 (37 Stat., 56); and October 30, 1913 (38 Stat., 234). Generally speaking, extensions of time can not be allowed under these acts where extensions aggregating six years under all acts, both general and special, have been granted; where the irrigation works intended to convey water to the land have been completed, or, for any other reason, the claimant's inability to submit final proof can not be attributed to unavoidable delay in the construction of such irrigation works; where the cause of delay in submitting the final proof is the claimant's temporary inability to acquire a water right; or where, on account of drought of greater or less duration, but not likely, in all probability, to be a permanent condition, the operation of a completed system of irrigation works has been hindered or delayed. Under any of these conditions an application for an extension of time under the first paragraph of the new law can be entertained, except where the entered lands have been included within the exterior limits of a land withdrawal or irrigation project under the act of June 17, 1902 (32 Stat., 388), and the submission of satisfactory final proof is being hindered or delayed thereby,

so that the case comes within the provisions of the sixth section of the act of June 27, 1906, *supra*.

No application for extension of time can be allowed, however, if it appears that the claimant's inability to submit final proof as required by the desert-land law is due to his own neglect or default; nor will any such application be granted where it appears that there is no reasonable prospect that the applicant will be able to provide a supply of water sufficient to irrigate and permanently reclaim all the irrigable land embraced in his entry, because, in such a case, no extension of time can enable the entryman to comply with the requirements of the desert-land law.

#### OTHER FORMS OF RELIEF.

(6) The second and third paragraphs of the new law are designed to afford relief in cases of the kind last above mentioned, by authorizing the Secretary of the Interior, in his discretion, to permit the applicant to perfect his entry in the manner required of a homestead entryman, or to purchase the land on the terms specified, as the applicant may elect. The entry itself is not transmuted, however, but remains a desert-land entry, subject to a new kind of proof.

#### CONDITIONS AUTHORIZING HOMESTEAD PROOF AND PURCHASE.

(7) To entitle a claimant to relief under either of these paragraphs, it must be made to appear to the satisfaction of the Secretary of the Interior (a) that the entry in question is a lawful pending entry, made prior to July 1, 1914; (b) where application for relief is made on behalf of an assignee, that the entry was assigned to him prior to March 4, 1915; (c) that the applicant, or his assignors, have, in good faith, expended the sum of \$3 per acre in the attempt to effect reclamation of the entered land; and (d) that there is no reasonable prospect that if the extension of time allowed by the first section of this act, or any other existing law were granted, the applicant would be able to secure water sufficient to effect reclamation of the land in his entry, or any subdivision thereof.

What is said in paragraph 4, *supra*, is equally applicable with respect to these conditions also.

With regard to the third condition, any expenditure which the claimant can show that he has made in good faith and with a reasonable belief that it would tend to effect reclamation of the land will be acceptable, even though such expenditure may not have been such as would satisfy the requirements for annual proof.

With regard to the fourth condition, the applicant should show what steps he has taken for the purpose of acquiring a water right and with what result, what has been done by himself or others toward the development of a water supply and the construction of an irrigation

system to bring the water to the land, the reasons for his failure to secure an adequate water supply, and his grounds for believing that there is no reasonable prospect of final success in acquiring such a supply. In this connection consideration will be given to any special agent's reports on file regarding any irrigation company or irrigation district from which applicant has been endeavoring to secure water, and if it appears therefrom that there is no reasonable prospect that the applicant can secure a sufficient water supply the existence of that condition will be taken for granted.

#### NOTICE OF ALLOWANCE OF RELIEF—ELECTION TO PURCHASE.

(8) As soon as any application for relief under the second and third paragraphs shall have been allowed by the Commissioner of the General Land Office notice thereof will be served, through the proper local land office, upon the claimant, advising him that he will be allowed five years from date of service of such notice within which to perfect his entry in the manner required of a homestead entryman, unless he shall elect to perfect the entry by purchase under the third paragraph of this measure, in which event he must, within 60 days from date of receipt of such notice, execute and acknowledge before some officer authorized to take acknowledgments of deeds a declaration of his election so to do, file the same in the land office for the district wherein the entry is located, and pay to the receiver the sum of 50 cents for each acre embraced in said entry. Such notice will further instruct the applicant that, having thus complied with the preliminary requirements, he will be allowed five years from the date of his election within which to comply with the remaining requirements of the law.

#### PROCEDURE.

(9) In the submission and consideration of final proofs under the second and third paragraphs, the usual course of procedure with regard to desert-land final proofs will be followed, so far as applicable. The notice of intention to submit proof, however, should indicate whether the entry is to be perfected as in homestead cases, or by purchase.

#### ASSIGNMENT AND ALIENATION.

(10) As the benefits of the second and third paragraphs are not extended to assignees under assignments made after the date of the act, no assignment of a desert-land entry which, prior to the date of such assignment, has been authorized to be perfected under either of said sections, will be allowed; and in the final adjudication of entries being perfected under the provisions of said paragraphs, the same rules will be observed, as to proof of nonalienation, as in homestead cases.

## ENTRIES PERFECTED BY COMPLIANCE WITH HOMESTEAD LAW.

(11) A claimant who has received permission to perfect his entry in the manner required of homestead entrymen may make proof at any time when he can show that residence and cultivation have been maintained in good faith for the required length of time and to the required extent.

However, inasmuch as the homestead laws do not authorize the commutation of homesteads made under the enlarged homestead acts, commutation proof will not be accepted upon any desert-land entry involving more than 160 acres.

Failure to submit final proof within the five-year period allowed by the law will be ground for the cancellation of the entry, unless good reason for the delay can be shown, in which event final certificate may be issued and the case referred to the Board of Equitable Adjudication for confirmation.

Those provisions of the homestead law which define the personal qualifications required of entrymen do not apply to cases of this kind, but the final proof must show that the claimant possesses the same qualifications as to citizenship and the amount of land entered by him, or assigned or patented to him, under the agricultural public-land laws, as in the case of those who make ordinary final proof on desert-land entries.

## RESIDENCE ON ENTERED LAND.

(12) If not already residing on his desert-land entry, the claimant must establish residence thereon within six months from the date of receiving the notice advising him that he will be permitted to perfect his entry under the second paragraph, unless such period be extended as permitted by the homestead law.

Residence upon the land must be continuously maintained for a period of three years from and after the date of its establishment. During each year the claimant may be absent for two periods only, the aggregate thereof not to exceed five months. Actual residence must be maintained for the remaining seven months of each year. If commutation proof is submitted, substantially continuous residence upon the land for a period of 14 months must be shown, together with the cultivation of not less than one-sixteenth the area of the entry, unless a reduction of the area required to be cultivated be allowed. The requirements made by this circular as to the period of residence and amount of cultivation are those of the act of June 6, 1912 (37 Stat., 123), or the "three-year homestead law."

If a claimant establishes residence upon his entry prior to the allowance of his application for relief, and continues to maintain it in good faith as required by the homestead law, full credit will be allowed for the period during which such residence is so maintained.

Leaves of absence and credit for military service will be allowed upon the same terms and conditions as in case of a homestead entry.

The claimant must have a habitable house upon the land at the time of submitting final proof. Other improvements should be of such character and amount as are sufficient to show good faith.

#### CULTIVATION.

(13) Cultivation of the land for a period of three years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed), where that manner of cultivation is necessary or generally followed in the locality. During the second year, not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are applicable to all cases, without regard to the area or location of the entry. The period of cultivation, like that of residence, may begin before the allowance of the application for relief; credit for all cultivation, if in accordance with the provisions of the three-year homestead law, will be allowed, without regard to the time when it was performed.

#### ENTRIES IN UTAH AND IDAHO.

(14) If the entry is situated in the States of Utah or Idaho, and the lands involved have been, or shall be, designated as being of the character subject to entry under the sixth sections of the acts of February 19, 1909 (35 Stat., 639), as amended, or June 17, 1910 (36 Stat., 531), respectively, the entryman may avail himself of the privileges of these sections, upon a proper showing of the character of the land, as required of a homestead applicant thereunder, in which event residence need not be maintained upon the land, but the amount of cultivation required is double that in ordinary cases and must be shown during a period of four years. For further details, reference should be made to the circular of this office known as Suggestions to Homesteaders, copies of which may be obtained of this office or any local land office.

#### RIGHTS OF HEIRS AND DEVISEES.

(15) If an entryman dies before being authorized to exercise the rights conferred by the second and third paragraphs, or after such authorization but before he has perfected his entry, his rights will

pass to those persons who would inherit his lands according to the laws of the State wherein the entry is located, or, if he leaves a will, to those to whom he devises such rights. Applications for the benefits of the new law may be filed, and proofs thereunder may be submitted either by one of the heirs in behalf of all, by a guardian of the heirs' estate if they themselves are minors, or by the entryman's executor or administrator, acting under the supervision of the proper probate court.

The heirs or devisees will not be required to settle or reside upon the land, but must show that the land has been cultivated and improved by them, or on their behalf, as required by the homestead law, for such period as will, when added to the entryman's period of compliance with the law, aggregate the required term of three years. If they desire to commute the entry, they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived.

With regard to the reduction of the required area of cultivation, the same rules and procedure will be followed as in homestead cases.

(16) The same fees, and no others, may be charged by registers and receivers upon submission of final proofs under the new law as upon submission of ordinary desert-land proofs. No commissions may be charged under any circumstances, and no testimony fees unless the proof is taken at the land office.

#### ENTRIES PERFECTED BY PURCHASE.

(17) If claimant elects to perfect his entry under the third paragraph, he must, within five years from the date of his election and payment of the sum of 50 cents per acre, make final proof and pay to the receiver the further sum of 75 cents for each acre of land embraced in his entry. The final proof, in order to be acceptable, must show that, at the date of the proof, the claimant has upon the tract permanent improvements conducive to the agricultural development thereof, of the value of at least \$1.25 per acre, and that he has in good faith used the land for agricultural purposes for at least three years. Under this third paragraph grazing will be regarded as an agricultural use, provided it be established that the land is best suited to that purpose and has been so used in good faith. Actual residence on the land need not be shown.

#### IMPROVEMENTS REQUIRED.

(18) Improvements made during the first three years of the life of the entry and used as the basis of annual proof, if permanent in character and conducive to the agricultural development of the land,

may be counted as improvements required to be shown under this section, provided their character and continued existence are satisfactorily established by the final proof; but no water rights or irrigation ditches will be recognized for this purpose, unless it is clearly shown that they have been made actually conducive to the agricultural development of the land, or a portion thereof, and that that fact is not inconsistent with the truth of the claimant's preliminary showing that there was no reasonable prospect that he could acquire a sufficient water supply to irrigate the irrigable land of any legal subdivision of his entry.

#### FORFEITURE.

(19) If a claimant fails to make final proof and payment, as required by the third paragraph, within the 5-year period, all sums theretofore paid by him will be forfeited and the entry canceled.

#### FORM OF PROOFS.

(20) Final proofs under the second paragraph may be made on the forms used in homestead cases. For final proofs to be made under the third paragraph, new forms will be furnished.

CLAY TALLMAN,  
*Commissioner.*

Approved:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

[PUBLIC—No. 296—63D CONGRESS.]

AN ACT Making appropriations to supply deficiencies in appropriations for the fiscal year nineteen hundred and fifteen and for prior years, and for other purposes.

That the Secretary of the Interior may, in his discretion, extend the time within which final proof is required to be submitted upon any lawful pending desert-land entry made prior to July first, nineteen hundred and fourteen, such extension not to exceed three years from the date of allowance thereof: *Provided*, That the entryman or his duly qualified assignee has, in good faith, complied with the requirements of law as to yearly expenditures and proof thereof, and shall show, under rules and regulations to be prescribed by the Secretary of the Interior, that there is a reasonable prospect that if the extension is granted he will be able to make the final proof of reclamation, irrigation, and cultivation required by law: *Provided further*, That the foregoing shall apply only to cases wherein an extension or further extension of time may not properly be allowed under existing law.

That where it shall be made to appear to the satisfaction of the Secretary of the Interior, under rules and regulations to be prescribed by him, with reference to any lawful pending desert-land entry made prior to July first, nineteen hundred and fourteen, under which the entryman or his duly qualified assignee under an assignment made prior to the date of this act has, in good faith, expended the sum of \$3 per acre in the attempt to effect reclamation of the land, that there is no reasonable prospect that, if the extension allowed by this act or any existing law were granted, he would be able to secure water sufficient to effect reclamation of the irrigable land in his entry

or any legal subdivision thereof, the Secretary of the Interior may, in his discretion, allow such entryman or assignee five years from notice within which to perfect the entry in the manner required of a homestead entryman.

That any desert-land entryman or his assignee entitled to the benefit of the last preceding paragraph may, if he shall so elect within sixty days from the notice therein provided, pay to the receiver of the local land office the sum of 50 cents per acre for each acre embraced in the entry, and thereafter perfect such entry upon proof that he has upon the tract permanent improvements conducive to the agricultural development thereof of the value of not less than \$1.25 per acre, and that he has in good faith used the land for agricultural purposes for three years, and the payment to the receiver at the time of final proof of the sum of 75 cents per acre: *Provided*, That in such case final proof may be submitted at any time within five years from the date of the entryman's election to proceed as provided in this section, and in the event of failure to perfect the entry as herein provided all moneys theretofore paid shall be forfeited and the entry canceled.

Approved, March 4, 1915.

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### CARL W. RIDDICK.

*Decided April 13, 1915.*

#### SOLDIERS' ADDITIONAL—MINOR ORPHAN CHILDREN—ADOPTED CHILDREN.

The term "minor orphan children" employed in section 2307, Revised Statutes, to designate persons entitled to soldiers' additional rights under certain circumstances, contemplates that legally adopted children of a soldier shall stand on the same footing, so far as such rights are concerned, as the legitimate children of his body.

JONES, *First Assistant Secretary*:

Motion for rehearing has been filed in the above-entitled case, wherein by departmental decision of January 28, 1915, was affirmed the action of the Commissioner rejecting soldiers' additional application 028355, to make entry for the NW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 33, T. 19 N., R. 19 E., M. M., Lewistown, Montana, land district.

The question presented is whether section 2307, Revised Statutes, contemplated by the words "minor orphan children" only children of the body, or also included children by adoption under the State's law.

No new arguments are presented in support of this motion for rehearing, and this Department adheres to its holding "that legally adopted children are in this matter on the same footing as legitimate children of the body."

The motion for rehearing is denied.

**ENLARGED HOMESTEAD—ADDITIONAL ENTRY AFTER PROOF  
ON ORIGINAL—ACT OF MARCH 3, 1915.**

INSTRUCTIONS.

[No. 401]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., April 17, 1915.*

REGISTERS AND RECEIVERS,

*United States Land Offices, Arizona, California, Colorado, Idaho,  
Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon,  
South Dakota, Utah, Washington, and Wyoming.*

SIRS: The act of Congress approved March 3, 1915 (Public, No. 279), amends sections 3 and 4 of the enlarged homestead acts of February 19, 1909 (35 Stat., 639), and June 17, 1910 (36 Stat., 531), so as to permit an additional entry thereunder to be made, though proof has already been submitted on the original, provided the applicant still owns and occupies the tract first entered, and it defines the residence and cultivation required in connection therewith.

2. The act does not change the law as to additional entries made before submission of proofs on the originals; therefore there is, as to such entries, no alteration in the rules heretofore in force, as explained in the instructions of March 17, 1913 (42 L. D., 345), the substance whereof is embodied in paragraph 47 of the homestead circular of January 2, 1914 (43 L. D., 1). As to entries permitted by the present act, the following instructions are issued:

3. *Who may make entry.*—The act confers the right of entry only upon one who "still owns and occupies the land" first entered; it is not required that the claimant be residing on said tract, and the occupancy thereof may be by agent or through a tenant. A statement showing continued ownership and occupancy must be inserted in Form 4-004, in case of applications under this act. It should be observed that no change has been made in the requirement of law that the tracts be contiguous; and this would not be fulfilled by the fact that they *corner* on each other.

4. *Residence.*—The claimant is allowed credit for residence on the original tract and can not, in any event, be required to show residence continued for a greater period than is prescribed by section 2291 of the Revised Statutes. In other words, if the proof on the original entry has been accepted as sufficient under either the five-year or the three-year act, no further residence is needed; but, if the proof was by way of commutation, claimant must show such further residence, before or after the date of the additional entry, as will make up the aggregate amount required by the provisions of the act of June 6, 1912 (37 Stat., 123).

5. *Cultivation*.—The law regarding cultivation, with reference to additional entries made before submission of proofs on the originals, has no application to the entries allowed under this act. The claimant is required to show cultivation of the additional tract itself, to the extent and for the period required by the act of June 6, 1912, that is, one-sixteenth of its area during the second year of the entry, and one-eighth during the third and until submission of proof, which must occur within five years after the date of the additional entry.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

[PUBLIC—No. 279.]

An Act To amend an act entitled "An act to provide for an enlarged homestead."

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That sections three and four of the act entitled "An act to provide for an enlarged homestead," approved February nineteenth, nineteen hundred and nine, and of an act entitled "An act to provide for an enlarged homestead," approved June seventeenth, nineteen hundred and ten, as amended by an act approved February eleventh, nineteen hundred and thirteen, be, and the same are hereby, amended to read as follows:

"SEC. 3. That any person who has made, or shall make, homestead entry of lands of the character herein described, and who has not submitted final proof thereon, or who having submitted final proof still owns and occupies the land thus entered, shall have the right to enter public lands, subject to the provisions of this act, contiguous to his first entry, which shall not, together with the original entry, exceed three hundred and twenty acres: *Provided*, That the land originally entered and that covered by the additional entry shall have first been designated as subject to this act, as provided by section one thereof.

"SEC. 4. That at the time of making final proof, as provided in section twenty-two hundred and ninety-one of the Revised Statutes, the entryman under this act shall, in addition to the proofs and affidavits required under said section, prove by himself and two credible witnesses that at least one-sixteenth of the area embraced in such entry was continuously cultivated for agricultural crops other than native grasses, beginning with the second year of the entry, and that at least one-eighth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry: *Provided*, That any qualified person who has heretofore made, or who hereafter makes, additional entry under the provisions of section three of this act to an entry upon which final proof has not been made, may be allowed to perfect title to his original entry by showing compliance with the provisions of section twenty-two hundred and ninety-one of the Revised Statutes, respecting such original entry, and thereafter in making proof upon his additional entry shall be credited with residence maintained upon his original entry from date of such original entry, but the cultivation required upon entries made under this act must be shown respecting such additional entry, which cultivation, while it may be made upon either the original or additional entry or upon both entries, must be cultivation in addition to that relied upon and used in making proof upon the original entry; or, if he elects, his original and additional entries may be considered as one, with full credit for residence upon

and improvement made upon his original entry, in which event the amount of cultivation herein required shall apply to the total area of the combined entry, and proof may be made upon such combined entry whenever it can be shown that the cultivation required by this section has been performed; and to this end the time within which proof must be made upon such a combined entry is hereby extended to seven years from the date of the original entry: *Provided further*, That where an entry is made as additional to an entry upon which final proof has theretofore been submitted by an entryman who still owns and occupies the land thus entered, the entryman in making proof upon his additional entry shall be credited with residence maintained upon his original entry from date thereof, but the cultivation required upon entries made under this act must be shown respecting such additional entry and must be performed upon the land included therein to the extent and for the period required in connection with the original entries under this act, proof of which must be submitted within five years from and after the date of the additional entry: *Provided further*, That nothing herein contained shall be so construed as to require residence upon the combined entry in excess of the period of residence as required by section twenty-two hundred and ninety-one of the Revised Statutes."

Approved March 3, 1915.

### ENLARGED HOMESTEAD—PETITIONS FOR DESIGNATION— ACT OF MARCH 4, 1915.

#### INSTRUCTIONS.

[No. 402]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., April 17, 1915.*

#### REGISTERS AND RECEIVERS,

*United States Land Offices, Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.*

SIRS: Section 1 of the act of Congress approved March 4, 1915 (Public, No. 299), copy of which is appended, confers a preference right of entry under sections 1 to 5, or under section 6, of either of the enlarged-homestead acts, upon a qualified person pursuant to whose petition land is designated as subject thereto. These instructions are explanatory of the act and of the procedure prescribed for its execution.

2. The act applies to cases where the party is seeking to make an original entry and to all cases where he seeks to make additional entry, regardless of the question whether proof has or has not been already submitted on his original filing.

It does not affect the right of any person or persons interested in designation of land to forward to the Director of the United States Geological Survey or to the Secretary of the Interior a petition therefor.

3. (a) Where a preference right under the act is sought there must be filed at the proper local land office the usual application for

entry, original or additional, as the case may be, executed by the applicant and two witnesses, and the fee and commissions must be then paid; it must be accompanied by the applicant's affidavit, executed in duplicate and corroborated by at least two witnesses, setting forth the character of the land involved—both tracts, if additional entry is sought.

(b) This affidavit, which will be entitled "Petition for Designation," must give the name and post-office address of the applicant and a description by legal subdivisions of all the land involved; in case of additional applications it should give the serial number (or numbers) of the old claim.

(c) In case of applications for entry under sections 1 to 5, commonly known as the general provisions, of the enlarged homestead act, the affidavit should set forth fully the conditions governing the irrigability of the land. If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given.

The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land, should be given. If there are no wells thereon such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and reclaim the tract, or if it has been included in a desert-land entry, the reasons for lack of success should be stated.

The affidavit should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

(d) In cases of applications for entry under section 6 of the enlarged homestead acts, applicable to Utah and Idaho, the affidavit should give information regarding the possibility of securing on the land a supply of water suitable for domestic use. If there are on the tract, or in its immediate vicinity, springs or streams which would furnish such supply, a complete statement should be made as to the quantity, quality, and availability of the water. A statement should also be made as to the location, depth, elevation of water plane relative to the surface, depth at which water was first obtained, and

other pertinent facts as to the wells situated either in vicinity of the tract or nearest thereto and as to the relation of the tract thereto. If unsuccessful attempts have been made to secure a domestic water supply on the land itself, the facts concerning them should be set forth.

If the tract has not theretofore been designated by the Secretary of the Interior under sections 1 to 5 of the act, applicants for designation under section 6 thereof should, in addition to the above, furnish the information required of applicants for designation under said sections 1 to 5, as hereinabove explained.

(e) The filing of an affidavit, as above indicated, will not be conclusive as to the character of the land therein described, and the applicant may be required by the Geological Survey to furnish additional evidence with regard thereto. Moreover, the filing of an application and petition does not give the party the right to fence the land or place other improvements thereon, and the erection of improvements will not confer upon him any right to equitable consideration of the application in the event the land is found not to be of the character contemplated by those provisions of the enlarged homestead act under which the claim is filed.

4. The applications for entry (when regular) will be suspended by you and retained in your office, but you will promptly forward both copies of the affidavit by special letter to this office, which will transmit one to the United States Geological Survey for consideration. Where defects appear in the papers—especially (as to additional entries) failure to refer in the affidavit to the tract originally entered—you will call for supplemental evidence, as in other cases; if this is not furnished, you will forward all the papers to this office for consideration, making proper recommendations in connection therewith.

5. No other appropriation of the land will be allowed before the application has been finally disposed of. However, later applications therefor should be received and suspended. If withdrawal of an application under the act of March 4, 1915, be filed, you will promptly notify this office thereof, inviting special attention to the pendency of the petition for designation, and will close the case on your records. Prior to final action on the application the party's homestead right will be in abeyance, and he will not be entitled to exercise same elsewhere, nor will he be permitted to have two applications under this act pending at the same time.

6. If a request for designation be denied, the application for entry will be rejected by this office, and when the decision becomes final you will be directed to close the case on your records. Where a petition is granted in part, an order appropriate to the case will be made as to the designated lands. If designation be made of all the land

involved, you will, when it becomes effective, be directed in the usual manner to place the entry of record.

7. The benefits of the act do not extend to a person who has filed a petition for designation elsewhere than at the local land office of the district where the land is situated, nor to one whose petition was filed at the place indicated, unless accompanied by application for entry of the land. In every case where there is now pending an application for original or additional entry under the enlarged homestead act, not allowable because part or all of the land has not been designated, you will promptly advise the applicant of the passage of the act of March 4, 1915, forwarding a copy of these instructions, and allowing him 30 days after notice within which to furnish the required corroborated affidavit in duplicate; if this be done, you will take action as directed in paragraphs 2 to 5 hereof, reporting as to adverse claim, if any there be.

8. Where you have knowledge that a person has filed a petition for designation of land, but no application for entry thereof, you will advise him of the passage of the act, forwarding him a copy hereof and informing him that he will be obliged to comply with its provisions in order to obtain the preference right provided thereby.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

[PUBLIC—No. 299.]

AN ACT To amend an act entitled "An act to provide for an enlarged homestead," and acts amendatory thereof and supplemental thereto.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That where any person qualified to make entry under the provisions of the act of February nineteenth, nineteen hundred and nine, and acts amendatory thereof and supplemental thereto, shall make application to enter under the provisions of said acts any unappropriated public land in any State affected thereby which has not been designated as subject to entry under the act (provided said application is accompanied and supported by properly corroborated affidavit of the applicant in duplicate, showing prima facie that the land applied for is of the character contemplated by said acts), such application, together with the regular fees and commissions, shall be received by the register and receiver of the land district in which said land is located, and suspended until it shall have been determined by the Secretary of the Interior whether said land is actually of that character; that during such suspension the land described in said application shall be segregated by the said register and receiver and not subject to entry until the case is disposed of; and if it shall be determined that such land is of the character contemplated by the said acts, then such application shall be allowed; otherwise it shall be rejected, subject to appeal: *Provided,* That the provisions of this act shall apply to the application

of a qualified entryman to make additional entry of unappropriated land adjoining his unperfected homestead entry, the area of which, together with his original entry, shall not exceed three hundred and twenty acres.

SEC. 2. That the provisions of this act and of the first five sections of said act of February nineteenth, nineteen hundred and nine, and acts amendatory thereof, excepting the act of June seventeenth, nineteen hundred and ten, entitled "An act to provide for an enlarged homestead" in the State of Idaho, shall extend to and include the State of South Dakota.

Approved March 4, 1915.

### MAST v. KUHN.

*Decided April 20, 1915.*

#### HOMESTEAD—AMENDMENT—CONTEST—ABANDONMENT.

Where by mistake in description a homestead entry is made for land not intended to be taken, and amendment is allowed to the tract desired, the entry dates from the amendment, and a contest on the ground of abandonment filed within six months from that date is premature.

JONES, *First Assistant Secretary*:

February 27, 1913, Albert G. Kuhn's homestead application 013674, under the act of June 17, 1910, for the S.  $\frac{1}{2}$ , Sec. 34, T. 2 S., R. 41 E., B. M., Blackfoot, Idaho, land district, was allowed. June 17, 1913, such entry was held for cancellation because of conflict with State selection except as to 40 acres thereof, and in the Commissioner's letter holding said entry for cancellation in part, it was suggested that perhaps a mistake had been made in the description of the land intended to be entered by Kuhn.

July 17, 1913, Kuhn filed corroborated affidavit stating that the land which he desired and intended to enter was the S.  $\frac{1}{2}$ , Sec. 34, T. 1 N., R. 41 E., B. M., same land district. By the Commissioner's letter of November 17, 1913, the change of description desired by Kuhn was permitted, and he was allowed entry for the S.  $\frac{1}{2}$ , Sec. 34, T. 1 N., R. 41 E., B. M.

March 30, 1914, John A. Mast filed contest affidavit against said entry, charging:

That said entryman has never established, nor maintained actual residence upon said land, and for more than six months last past has entirely abandoned the same.

This contest is against Kuhn's homestead entry for the S.  $\frac{1}{2}$ , Sec. 34, T. 1 N., R. 41 E., B. M., and was filed within six months from the date he was allowed entry for said tract. It is clear that the contest was premature under departmental decision in the case of *Jerry Whitman v. Abraham M. Norfleet and Win Martin*, intervener, Hugo 013554, 013422, decided by the Department September 30, 1914, unreported. Notice, however, was issued upon said contest affidavit by the local officers, and hearing had, both parties appearing and submitting evidence.

August 1, 1914, the local office joined in decision recommending cancellation of the entry; January 13, 1915, the Commissioner of the General Land Office, considering the case upon appeal, sustained the action of the local officers, and from this decision entryman Kuhn has appealed to the Department. It appears from the evidence that Kuhn had fenced the land and made some residence thereon, but probably insufficient to constitute compliance with law, if his entry dated from February 27, 1913. It appears, however, that he delayed building the house upon the land, residing only in a tent and sheep wagon thereon, for different reasons but largely because he did not have an entry for the land which he intended to take until November 17, 1913.

The Department upon consideration of the record, is of the opinion that Kuhn's entry dated from November 17, 1913, and that he had six months from that date in which to establish residence upon the tract for which he was allowed homestead entry on that date. It follows that the contest was premature and should have been rejected. The decision appealed from is reversed and the entry of Kuhn will remain intact, subject to future showing of compliance with law.

### NORTHERN PACIFIC RY. CO.

*Decided April 20, 1915.*

#### NORTHERN PACIFIC GRANT—MINERAL LANDS—CLASSIFICATION—ENTRIES.

Where settlement and entry were made of lands classified as mineral under the act of February-26, 1895, and included in the so-called "Garfield Agreement," prior to notation upon the records of the local office of the direction of March 1, 1911, that further entries of such lands would not be permitted, and the lands so settled upon and entered were subsequently classified as nonmineral under the act of June 23, 1910, the rights of such entrymen are superior to the claim of the Northern Pacific Railway Company under its grant; but upon relinquishment of any such entry, the land inures to the company.

JONES, *First Assistant Secretary:*

The Northern Pacific Railway Company has appealed from the decision of the General Land Office, rendered April 18, 1914, holding for cancellation Bozeman, Montana, list No. 165, in so far as it included the following described lands:

Lot 4 and S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 1; the W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , and NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 25, T. 4 N., R. 3 E.; the NE.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  and NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 7, T. 3 N., R. 4 E.; and N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$  and NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 33, T. 4 N., R. 4 E., M. M.

August 29, 1913, the railway company filed its selection list for these and other lands as lands within the primary limits of its grant

under the act of July 2, 1864 (13 Stat., 365). The local officers rejected said list in part, upon the ground of conflict with certain homestead and other entries.

It appears that the lands involved were classified as mineral, under the act of February 26, 1895 (28 Stat., 683), on July 26, 1897, and, as such, were excepted from the company's grant, but were subject to agricultural entry or other disposition if on further examination found to be in fact nonmineral. (See Instructions, 25 L. D., 446; *Luthye v. Northern Pacific Railroad Company*, 29 L. D., 675.) Said lands were also included in the so-called "Garfield agreement," made between the Northern Pacific Railway Company and Secretary of the Interior Garfield on January 12, 1909, under the terms of which the railway company agreed to the setting aside of the nonmineral classification of so much of lands in Montana alleged to be mineral as had not been transferred by the railway company to innocent purchasers for value, and also agreed to reconvey such lands to the United States, the agreement to relate not only to the land then alleged to be mineral but to other lands thereafter found to be mineral. The railway company agreed to submit a list of lands classified as mineral which it believed to be nonmineral in fact, and the Secretary agreed that the existing classification should be set aside if, on investigation, the railway company's claim that such land was nonmineral proved well founded. The quantity of land to be surrendered by the railway company for which it was to receive equivalent acreage under this agreement was not to exceed 19,120 acres.

In pursuance of this agreement, the railway company, on August 24, 1910, transmitted a list of 41,904.94 acres, claimed by it to be erroneously classified as mineral land, and requested prompt examination in the field by the Geological Survey. The local officers were directed by letter of March 1, 1911, to make no disposition of the lands included in the list furnished by the railway company. A revised list, corrected so as to include a much smaller number of acres, was later required of the railway company, and furnished by it, and the Geological Survey was directed to continue its field examination. The lands embraced in the so-called "Garfield agreement" lists were classified as nonmineral under the act of June 25, 1910 (36 Stat., 739), as supplemental to the act of February 26, 1895, and this classification was approved by the Secretary on May 26, 1913.

The lands included in the so-called "Garfield agreement" were subject to agricultural entry until notation was made upon the records of the local office, as directed by the letter of March 1, 1911, *supra*, that further entry thereof would not be permitted, and prior to this time, and pending the negotiations above mentioned, a num-

ber of entries were allowed, the entrymen being required to show the nonmineral character of the land covered by their entries. The railway company's selection list included lands covered by these entries, and to this extent such list was held for cancellation. From this action the railway company appeals.

It is contended in the appeal that as the lands here involved are within the primary limits of the grant to the railway company, and have now been determined to be nonmineral, the lands of right belong to the railway company, and it is even suggested that title vested in the railway company at the date of definite location of its road, regardless of what official action was taken looking to a classification of the land as mineral or nonmineral.

The Department cannot assent to such contention. The mineral character of the land, as established by proceedings under the act of February 26, 1895, *supra*, remained at the time the settlers and others made entry, and these, severally, took upon themselves the burden of proving the land they applied for as nonmineral, and are entitled to maintain their entries, having improved the lands and made them their homes.

Since the Commissioner's decision appealed from, it appears that one of the above-mentioned homesteaders, Mary C. McAtee, whose entry embraced the N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , and NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 33, T. 4 N., R. 4 E., has relinquished her entry. Such relinquishment inures to the benefit of the railway company, since this land is included in the primary limits of its grant, and the nonmineral character of the land was established by the Secretary's approval, May 26, 1913, of the reclassification under the act of June 25, 1910, *supra*.

As thus modified, the decision appealed from is affirmed.

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### GEORGE W. BOTHWELL.

*Decided April 20, 1915.*

#### IMPERIAL VALLEY—ISOLATED TRACTS—ACT OF MARCH 3, 1909.

The act of March 3, 1909, providing for the sale of isolated tracts in Imperial County, California, contemplates narrow strips, ten chains or less in width, lying between appropriated areas and not a part thereof, and has no application to contiguous lots, even though less than ten chains in width, where they together form one compact area aggregating approximately 160 acres.

JONES, *First Assistant Secretary*:

George W. Bothwell, transferee of the State of California, has appealed from the decision of the General Land Office of September 24, 1913, rejecting the State's indemnity school selection as to lots 10, 13, and 25, Sec. 13, T. 13 S., R. 14 E., S. B. M., on the ground that said lots are less than 10 chains wide and abut upon lands in private

ownership, or previously entered, and for that reason are not subject to selection, but only to sale under the terms and provisions of the act of March 3, 1909 (35 Stat., 779). The selection was made, or attempted to be made, July 29, 1909, after the passage of said act, and included the following: The NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , lots 10, 12, 13, 25, and 27, Sec. 13, T. 13 S., R. 14 E., and lots 10, 27, and 28, Sec. 18, T. 13 S., R. 15 E., S. B. M., Los Angeles, California, land district.

Upon examination of the Government plats of survey, it is found that the aggregate of the lots and the quarter-quarter section applied for by the State, as above mentioned, is a tract of 161.09 acres, in shape almost square, the sides being approximately 40 chains. Lots 10, 13, and 25 are the western portion of this tract. They are admittedly less than ten chains in width, and abut on patented or selected lands included in three entries, two of 320 acres, and one of 160 acres.

The law under which it is claimed that the State (or its transferee), in this case, is precluded from including these tracts in its selection, is the act of March 3, 1909 (35 Stat., 779), entitled "An act to provide for the sale of isolated tracts of public land in Imperial County, California," which, omitting parts here immaterial, reads as follows:

That all the allotted portions of townships thirteen, fourteen, . . . south of ranges . . . fourteen, fifteen, and sixteen, . . . east of San Bernardino meridian, which are ten chains or less in width and lie between or abut on entered or patented lands, shall be sold at private sale for cash, at such price and under such regulations as the Secretary of the Interior shall prescribe, but not at less than two dollars and fifty cents an acre: *Provided*, That any entryman or owner of such entered or patented tracts shall have a preferred right to buy one-half of all such lots as abut on lands held under his entry or owned by him within six months after the time when the said Secretary shall fix the price of such tracts, and this preferred right shall not prevent such entryman or owner from buying all or any such abutting lots as may remain unsold at the expiration of said six months.

An "isolated tract," as known to the public-land laws, is a relatively small tract isolated or "disconnected" as the result of the entry or other appropriation of the surrounding public lands, leaving it unappropriated. That it is essentially a fragment or remnant, in the acquisition of which ordinarily the homesteader would not care to exercise his homestead right, clearly appears from the following language in section 2455, Revised Statutes, which section authorizes the sale of such tracts by the Commissioner of the General Land Office:

any isolated or disconnected tract or parcel of the public domain less than one quarter section . . . *Provided*, That lands shall not become so isolated or disconnected until the same have been subject to homestead entry for a period of three years after the surrounding land has been entered, filed upon, or sold by the Government.

What tracts in the Imperial Valley, California, were intended by the act of March 3, 1909, *supra*, appears from the history of that act.

Under date of February 23, 1909, the Secretary of the Interior wrote the Chairman of the Senate Committee on Public Lands as follows:

I am in receipt of your request for a report on S. 9373 entitled "A bill to provide for the sale of isolated tracts of public land in San Diego County, California," and, in reply, have the honor to state that the necessity for the passage of this bill is found in the fact that a resurvey of the lands referred to, made by direction of Congress, resulted in leaving several strips of public lands between claims so narrow as to preclude the probability of their being entered under existing laws, and some of them, owing to confusion and uncertainty as to the lines of the former erroneous surveys, contain valuable improvements of abutting owners. This situation will bring about great hardship and loss to various desert-land claimants unless Congress authorizes some means of selling this land at an adequate price to adjoining entrymen. The proposed bill will accomplish that end, and I urgently recommend that it be enacted.

In the debate in the House of Representatives the purpose of the act was explained as follows (see Congressional Record, 60th Congress, 2d Session, Vol. 43, p. 3440):

MR. SMITH of California. The tracts interlying, where the two surveys come together, are very small, sometimes only a fraction of an acre, and frequently 2 or 3 acres, to the half mile of frontage on the farm. In some cases farmers have located their buildings unintentionally just outside of their farms. The largest lot I know of is about 13 acres.

\* \* \* \* \*  
MR. SMITH of California. . . . It is not desired that anybody should go in and get these little narrow strips to the annoyance of the farmers; and it gives the farmer there the first privilege of buying any of that land abutting on his land.

\* \* \* \* \*  
MR. CLARK of Missouri. This land is already surrounded by farms that are irrigated, is it not?

MR. SMITH of California. It lies in little narrow strips from 5 to 10 rods wide, where the surveys have not come together, and that leaves a little narrow strip between two farms, and they want to sell that little narrow strip to the abutting farmers. The largest area is 13 acres, and they want to divide that between two farmers, each one getting about 6½ acres.

From the above the Department is of opinion, and so holds, that the act of March 3, 1909, *supra*, did not contemplate the treatment, as an isolated tract, of land situated as are lots 10, 13, and 25 in the case at bar, namely, portions of a compact area containing slightly over 160 acres, but "narrow strips," ten chains or less in width, lying between appropriated areas and not a part thereof.

The decision appealed from is therefore reversed, and, in the absence of other objection not here appearing, the application of the State of California to make selection will be accepted.

**REICHERT v. NORTHERN PACIFIC RY. CO.**

*Decided April 20, 1915.*

**INDIAN LANDS—RAILROAD INDEMNITY SELECTIONS.**

The act of March 3, 1911, declaring the lands within the ceded portion of the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indian reservation to be part of the public domain and open to the operation of laws regulating the entry, sale, or disposal of the same, and that no patent should be denied to entries of such lands theretofore made in good faith under any of the laws regulating the entry, sale, or disposal of public lands, did not operate to validate railroad indemnity selections theretofore presented and properly rejected, but pending on appeal at the date of the act, as against adverse claims.

**JONES, *First Assistant Secretary:***

Anton Reichert has filed a motion for rehearing of departmental decision of May 15, 1914 (not reported), in the matter of his homestead application 019662, filed March 12, 1913, at Glasgow, Montana, for the N.  $\frac{1}{2}$ , Sec. 27, T. 24 N., R. 50 E., M. M., rejected because in conflict with the application of the Northern Pacific Railway Company to select the land as indemnity, list No. 15.

The land is within that portion of the ceded Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indian Reservation established by Executive order of April 13, 1875, and restored to the public domain by the act of May 1, 1888 (25 Stat., 113, 133). The land lies within the indemnity limits of the grant to the Northern Pacific Railway Company, joint resolution of May 31, 1870 (16 Stat., 378). The map of definite location of the railway was filed in 1882 and the plat of survey of the township was filed in the local land office April 22, 1909.

On July 8, 1909, the railway company filed the indemnity selection above described, which was rejected by the register and receiver under the rule announced in the case of *Bradley v. Northern Pacific Ry. Co.* (36 L. D., 7, and 37 L. D., 410). The decisions last mentioned held that under section 3 of the act of May 1, 1888, *supra*, the lands were not subject to indemnity selection by the railway company. The railway company appealed from this action, but final disposition was not made of the appeal until September 16, 1913, when the Commissioner of the General Land Office returned the indemnity selection list embracing this and other tracts to the register and receiver for allowance. Thereafter, however, the application to select was again rejected, because on March 12, 1913, Reichert had filed his application to make homestead entry.

From a decision of the Commissioner of the General Land Office, dated February 27, 1914, affirming the action of the local officers, appeal was prosecuted to the Department. In the meantime, Reichert's application was also rejected because of the pendency of the railway indemnity selection, and he has by appeal and motion prosecuted the case to the Department.

Section 3 of the act of May 1, 1888, *supra*, is as follows:

That lands to which the right of the Indians is extinguished under the foregoing agreement are a part of the public domain of the United States and are open to the operation of the laws regulating homestead entry, except section twenty-three hundred and one of the Revised Statutes, and to entry under the town site laws and the laws governing the disposal of coal lands, desert lands, and mineral lands; but are not open to entry under any other laws regulating the sale or disposal of the public domain.

The railway company contended that it was entitled to select the land under indemnity provisions of its grant, because section 2 of the act of July 2, 1864 (13 Stat., 365), provided:

The United States shall extinguish as rapidly as may be consistent with public policy and the welfare of said Indians, the Indian titles to all lands falling under the provisions of this act and acquired in the donation to the road.

Subsequent to the passage of the act of May 1, 1888, *supra*, certain lands within the ceded reservation were erroneously patented to the railway company, as were lands patented to individuals, who had been erroneously allowed to file soldiers' additional homestead entries. A demand was made upon the railway company to reconvey the lands erroneously patented to it, and upon its declination to reconvey suit was instituted to vacate the patents issued. Thereafter, by order of March 21, 1910, all pending railway selections for lands within the ceded reservation were ordered suspended pending the determination of the suit.

March 3, 1911 (36 Stat., 1080), Congress passed an act containing the following provisions:

That lands to which the right of the Indians is extinguished under the foregoing agreement are a part of the public domain of the United States and are open to the operation of laws regulating the entry, sale, or disposal of the same: *Provided*, That no patent shall be denied to entries heretofore made in good faith under any of the laws regulating entry, sale, or disposal of public lands, if said entries are in other respects regular and the laws relating thereto have been complied with.

A decision was rendered by the district court for Montana August 28, 1911 (204 Fed., 485), upon the suit heretofore described, but the question as to whether the lands were, under the act of May 1, 1888, *supra*, subject to indemnity selection by the railway company was not decided. The court held that the term "entries" as used in the proviso to the act of March 3, 1911, *supra*, embraced railway indemnity selections which had been patented, and that therefore the patented railway selections had been confirmed.

It is evident from the reports upon the measure which became law March 3, 1911, and from the debates thereupon in Congress that Congress had in mind the validation of soldiers' additional homestead entries which had been allowed in the ceded territory and upon which towns had been built and other improvements placed in good

faith and in reliance upon the allowance of the entries by this Department. The act as passed is, however, broad in its terms and has, as stated, been held by the district court to have confirmed the patented railway indemnity selections.

It is entirely clear from the language of section 3 of the act of March 1, 1888, that Congress did not intend to permit any of the lands subject to disposition thereunder to be disposed of in any form or manner or under any laws other than those named therein, namely, homestead entry, the townsite laws, coal-land laws, desert-land laws, and mineral-land laws. This is clear not only from the specific mention thereof, but from the concluding clause, which stipulates that the lands "are not open to entry under any other laws regulating the sale or disposal of the public domain." The term "disposal" is clearly applicable to the attempted railway indemnity selections and expressly prohibited their allowance.

The action of the register and receiver in rejecting the selection offered July 8, 1909, was therefore correct. The appeal of the railway company from this action entitled it only to a judgment as to the correctness of the action at the time it was taken and did not segregate the land from other appropriation. *Spalding v. Hake* (34 L. D., 541), *Eaton et al. v. Northern Pacific Ry. Co.* (33 L. D., 426), and other cases therein cited.

The departmental order of suspension of March 21, 1910, was not an acceptance or an approval of said selections, did not validate the same, or entitle the railway company to anything more than a decision as to the correctness of the action theretofore taken by the local officers. Its function and purpose was simply to hold the matter in *statu quo* pending the hoped for determination of the question involved by the courts.

In the case of *Eaton et al. v. Northern Pacific Ry. Co.*, *supra*, dealing with applications to enter under the timber and stone laws and the homestead laws by Eaton and Huntoon for land covered by a pending railway selection and during a suspension of the lands by this Department pending the judicial determination of involved questions, Eaton and Huntoon sought to invoke the remedial provisions of the act of July 1, 1898 (30 Stat., 597, 620). The Department held in part as follows:

What was the status of Eaton's claim to this land on January 1, 1898? He had not at that time initiated a claim by settlement, entry, or purchase. He had, as above shown, on October 26, 1895, applied to purchase the land under the timber and stone act, which application had been rejected for conflict with the pending indemnity selection by the railroad company, and he appealed to your office, where the matter was, January 1, 1898, pending. So long as the railroad indemnity selection remained intact, the land embraced therein was not subject to entry or purchase under the timber and stone act, and no right or claim could be initiated by an application for such entry or purchase.

The Department, after holding that his application was properly rejected and that his appeal entitled him only to a judgment as to the correctness of the action taken below, proceeds:

It is true that during the pendency of his appeal the railroad selection was canceled under a decision of this Department since held by the supreme court to have been erroneous, but this cancellation was not in any way attributable to his appeal, and it has been repeatedly held that an appeal from the action of the local officers properly rejecting an application because the land described therein is not at the time subject to entry, confers no right upon the applicant, even though the land becomes subject to entry during the pendency of the appeal. *Maggie Laird* (13 L. D., 502); *Swanson v. Simmons* (16 L. D., 44); *Katharine Davis* (30 L. D., 220); *Hall v. State of Oregon* (32 L. D., 565). Therefore, no right or claim was initiated by Eaton's appeal.

For somewhat similar reasons, Huntoon did not, prior to January 1, 1898, initiate any right or claim to the land under color of any ruling of this Department. . . .

This was the status of the claims of Eaton and Huntoon on January 1, 1898, and your office therefore very properly held that there were no such conflicting claims to this land January 1, 1898.

It appears that subsequent to the passage of the act of July 1, 1898, *supra*, the local land officers had accepted money tendered by Eaton and permitted him to purchase the land. With respect to this the Department held:

From the previous recitation it is apparent that Eaton's purchase was allowed in plain violation of the order of suspension, and it can not be held, therefore, that any such right was acquired by this purchase as entitled Eaton to be heard upon the question as to the validity of the railroad selection or any other claim asserted to the land prior to an order for the cancellation of the purchase thus erroneously allowed, and the fact that the government might, on the removal of all adverse claims to the land, permit a purchase thus erroneously allowed, to stand, does not in anywise affect the question here under consideration.

As already related, the decision of the court did not determine that particular question and the act of March 3, 1911, *supra*, which made the lands subject thereafter to entry, sale, or other disposal under the general public-land laws, provided with respect to existing prior claims:

That no patent shall be denied to entries heretofore made in good faith under any of the laws relating to entry, sale, or disposal of public lands, if said entries are in other respects regular and the laws relating thereto have been complied with.

The principal contentions made in the motion for rehearing are—

(1) That the term "entries" as used in the proviso just quoted does not include railway indemnity selections.

(2) That even if a railway indemnity selection is included within the term "entries" that the present selection was not made in "good faith."

That the railway indemnity selection tendered July 8, 1910, rejected by the register and receiver because of the express prohibitory terms of the act of March 1, 1888, and the departmental decisions in the case of *Bradley v. Northern Pacific Ry. Co.*, *supra*, and which

have never since been approved, do not constitute "entries" within the language, purpose, or intent of the proviso to the act of March 3, 1911, *supra*, seems clear. The last-named statute clearly presupposes an existing and allowed entry or its equivalent, and did not include any application by the railway or others which had been properly rejected. That no rights can be secured by the tender of an application to select or enter lands not at that time subject thereto is clearly established by the decisions herein cited, as well as by a long line of departmental rulings. The subsequent suspension of action upon the appeal by this Department pending judicial determination did not operate to give to the selections any different status, nor did the letter of the Commissioner of the General Land Office of September 16, 1913, returning the list in view of the provisions of the act of March 3, 1911, for allowance, have the effect of approving or validating such rejected selections as against intervening claims initiated prior thereto. The only effect of the latter action was to permit said selections to be allowed, in the absence of other objection, as selections attaching to the land from and after the date of the receipt in the local land office of said Commissioner's instructions of September 16, 1913.

In its previous decision in this case the Department failed to give due consideration to the fact that this application to select was *not* one which had been accepted and filed, thus segregating the land, but had, on the contrary, been rejected in the first instance and was therefore not a pending selection segregating the land from other appropriation or disposition.

Upon very thorough consideration of the entire matter involved, the Department is clearly of the opinion that the rejected applications to make indemnity selection were not entries within the meaning of the provisions of the act of March 3, 1911, *supra*; that they effected no segregation of the land therein described, but that same remained subject to entry or disposition under the applicable land laws up to and including the date of receipt in the local land office of Commissioner's letter of September 16, 1913; that on and after that time any pending applications to select for lands to which no adverse claim or right had theretofore attached may properly be regarded as new selections effective and pending from and after that time but not prior thereto.

The motion for rehearing is accordingly allowed, departmental decision of May 15, 1914, recalled and vacated, and the decision of the Commissioner of the General Land Office, dated February 27, 1914, is affirmed.

As to any similar selections embraced in the list returned for allowance by the Commissioner September 16, 1913, and to which lands no right or claim had theretofore attached, the selections may, as indicated, be held to have been received as of that date, and to

thereafter, during their pendency, segregate the land from other disposition. In the adjudication, however, of such selections, it will be necessary that the land department satisfy itself that there were no such prior and existing rights or claims, and the Commissioner of the General Land Office will take appropriate steps and issue any necessary instructions to accomplish this end.

### BERING SEA COMMERCIAL COMPANY.

*Instructions, April 21, 1915.*

#### ALASKA LANDS—RESERVATIONS ALONG NAVIGABLE WATERS.

The provision in the act of May 14, 1898, reserving eighty rods between claims located along navigable waters in Alaska, relates solely to the forms of entry or disposition mentioned in that act, namely, homestead entries, soldiers' additional entries or scrip locations, and entries for trade or business, and does not prevent the allowance of an entry for trade or business within less than eighty rods of a mission claim.

JONES, *First Assistant Secretary*:

I am in receipt of your [Commissioner of the General Land Office] letter "A" (C. A. O.) of June 30, 1914, concerning an application by the Bering Sea Commercial Company to purchase a certain tract containing 3.39 acres of land, situated in Akutan Harbor of Akutan Island, Alaska, as a trade and manufacturing site under the acts of May 14, 1898 (30 Stat., 409), and March 3, 1903 (32 Stat., 1028).

It appears that in August, 1907, a survey of the Russian-Greek Church mission claim, located upon the shore of Akutan Island, Alaska, fronting upon navigable waters, was made, the survey being approved November 12, 1908. May 19, 1909, the survey upon which the application of the Bering Sea Commercial Company is based, was made. The tract desired as a trade and manufacturing site is in close proximity to the survey of the mission claim, being less than four chains distant. The Bering Sea Commercial Company claims occupation of the tract for purposes of trade and business by it and its predecessors in interest since 1874. This occupation is somewhat challenged in a report by a special agent of your office, who also states that a part of the tract is occupied by natives adversely to the Bering Sea Commercial Company. The company, however, claims that the occupation of the natives is not adverse to it. The lands were reserved by Executive order No. 1733 of March 3, 1913, as a preserve and breeding ground for native birds, for the propagation of reindeer and fur-bearing animals, and for the encouragement and development of the fisheries. You desire instructions upon the following questions:

(1) Is Survey No. 765 on a reserved area and should there be eighty rods between it and the mission survey? (2) Is the land unoccupied by natives and therefore subject to disposition, or must it be reserved for such natives? (3) Have the Bering Sea Commercial Company and its predecessors been in possession of the land since 1874

and is it occupying the land in good faith for purposes of trading and manufacture?  
(4) What effect has the Executive Order of March 3, 1913, upon this application?

The act of May 17, 1884 (23 Stat., 24), provided, in section 26, that persons in the district of Alaska should not be disturbed in the possession of any lands actually in their use or occupation, or then claimed by them, but the terms under which such persons might acquire title to such lands were reserved for future legislation by Congress.

The first law permitting purchase of lands for the purpose of trade and business was contained in sections 12 and 13 of the act of March 3, 1891 (26 Stat., 1095). These provided in brief that any citizen of the United States, 21-years of age, or association of such citizens, or a corporation incorporated under the laws of the United States or of any State or Territory, might purchase public land in their possession and occupied for purposes of trade and manufacture, not exceeding 160 acres as nearly as practicable in a square from, at \$2.50 per acre. No restrictions were there made as to the amount of frontage that might be taken upon the shores of navigable waters, nor any limitation of area as between claims. The present applicant, however, did not apply under that law.

The present law permitting the purchase of land in Alaska for trade and business is that contained in section 10 of the act of May 14, 1898 (30 Stat., 409). This section allows the purchase of one claim only, not exceeding 80 acres, by any one person, association or corporation, at \$2.50 per acre. It also provides:

And ingress and egress shall be reserved to the public on the waters of all streams, whether navigable or otherwise: *Provided*, That no entry shall be allowed under this act on lands abutting on navigable water of more than 80 rods: *Provided, further*, That there shall be reserved by the United States a space of 80 rods in width between tracts *sold or entered under the provisions of this act* on lands abutting on any navigable stream, inlet, gulf, bay or seashore.

It then permits the Secretary of the Interior to grant the use of the areas reserved for landings and wharfs.

The act of May 14, 1898, therefore, requires that between tracts sold or disposed of under its provisions, which abut on navigable waters, a space of 80 rods in width shall be reserved. It is accordingly necessary to inquire as to what particular methods of sale or entry are contained in the act of May 14, 1898. The only other forms of entry or sale provided for in that act are those contained in section 1, which extends the homestead laws of the United States and the rights incident thereto, including the right to enter surveyed or unsurveyed lands under soldiers' additional homestead rights, to Alaska. The section contains the following proviso:

*Provided*, That no entry shall be allowed extending more than 80 rods along the shore of any navigable water, and along such shore a space of at least 80 rods shall be reserved from entry between all such claims.

A space of 80 rods accordingly is required to be reserved between all homestead entries or soldiers' additional rights, located along the shores of navigable waters. Under the act of May 14, 1898, therefore, the only requirement of reservation was of 80 rods between homestead entries, soldiers' additional entries, and entries for trade and business purposes.

Section 1 of the act of May 14, 1898, was amended by the act of March 3, 1903 (32 Stat., 1028). This act provides as follows:

That all of the provisions of the homestead laws of the United States not in conflict with the provisions of this act, and all rights incident thereto, are hereby extended to the district of Alaska, subject to such regulations as may be made by the Secretary of the Interior; and no indemnity, deficiency or lieu land selections pertaining to any land grant outside of the district of Alaska shall be made, and no land scrip or land warrant of any kind whatsoever shall be located within or exercised upon any lands in said district except as now provided by law; and, provided further, that no more than 160 acres shall be entered in any single body by such scrip, lieu selection or soldiers' additional homestead right; and provided further, that no location of scrip, selection or right along any navigable or other waters shall be made within the distance of 80 rods of any lands, along such waters, theretofore located by means of any such scrip or otherwise. . . . *Provided*, That no entry shall be allowed extending more than 160 rods along the shore of any navigable water, and along such shore a space of at least 80 rods shall be reserved from entry between all such claims.

This act, as to the location of scrip, selection or other rights, along the navigable waters or any other waters, requires a reservation of 80 rods from lands theretofore located by means "of any such scrip or otherwise." The term "scrip, selection or right," evidently refers to obligations on the part of the United States to grant a specific area of land to individuals in satisfaction of certain rights and does not refer to sales of public land.

The mission claim was made under the provisions of the act of June 6, 1900 (31 Stat., 330), section 27 of which provides:

The Indians or persons conducting schools or missions in the district shall not be disturbed in the possession of any lands now actually in their use and occupation, and the land at any station not exceeding 640 acres, occupied as mission stations among the Indian tribes in the section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which the missionary stations respectively belong, and the Secretary of the Interior is hereby directed to have such lands surveyed in compact form as nearly as practicable and patents issued for the same to the several societies to which they belong, but nothing contained in this act shall be construed to put in force in the district the general land laws of the United States.

The above act, it should be noted, contains no restriction as to the area that can be taken along shores of navigable waters, nor any reservation as to spaces between mission claims and other claims.

Considering the statutes as they stand, I am of the opinion that the reservation of 80 rods between claims mentioned in the act of May 14, 1898, relates solely to the forms of entry or disposition contained in that act, to wit, homestead entries, soldiers' additional

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DIVISION

entries or scrip locations and entries for trade and business. The purpose of the provision, no doubt, was to prevent the monopolization of harbor fronts or sites upon any navigable waters. This purpose would not be interfered with, by the location of mission claims nor the proximity of entries for trade and business to mission claims, as such mission claims are no doubt comparatively few in number and isolated. Your first question, therefore, is answered in the negative.

In order to determine the issues presented by questions 2 and 3, it will be necessary to have a hearing, as they present questions of fact.

The Executive Order of March 3, 1913, reserved and set apart the land for certain specified purposes. The order contains no clause excepting tracts upon which inchoate claims under the public land laws had theretofore attached. The claim of the Bering Sea Commercial Company, therefore, was not saved as against the withdrawal order.

You are instructed accordingly to order a hearing in order to determine the issues presented by questions 2 and 3, and should the evidence produced at such hearing disclose that the company's claim is *bona fide* and legal in all respects, the Department will consider the submission to the President of a modification of Executive Order which will permit of the allowance of the trade and manufacturing application.

The Department's prior instructions of February 18, 1915, are modified to the above extent.

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### KIOWA, COMANCHE, AND APACHE LANDS—HOMESTEAD ENTRIES.

#### INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., April 24, 1915.

REGISTER AND RECEIVER,  
*Guthrie, Oklahoma.*

SIRS: The act of March 4, 1915 (Public, No. 338), entitled: "An act to validate certain homestead entries," reads as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all homestead entries heretofore erroneously allowed for the unused, unallotted, and unreserved lands of the United States in the Kiowa, Comanche, and Apache Indian Reservations, which lands were authorized to be sold under section sixteen of the act approved March third, nineteen hundred and eleven (Thirty-sixth Statutes at Large, page one thousand and sixty-nine), and under the provisions of the act approved June thirtieth, nineteen hundred and thirteen (Thirty-eighth Statutes at Large, page ninety-two), are hereby ratified and confirmed: Provided, That in addition to the land-office fees prescribed by statute for such entries the entryman shall pay \$1.25 per acre for the land entered at the time of submitting final or commutation proof.*

Said legislation relates only to homestead entries theretofore erroneously allowed and does not validate any entry allowed on the date of the act, or subsequent thereto, and does not authorize the allowance of any entry for any land in the Kiowa, Comanche, and Apache reservations. You will be specifically advised with reference to the different entries involved in said legislation. You will observe that each entryman is required to pay \$1.25 per acre for the land at the time of submitting final or commutation proof on his homestead entry.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved April 24, 1915:

Bo SWEENEY,

*Assistant Secretary.*

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RECLAMATION ENTRYMEN—ACT MARCH 4, 1915.

CIRCULAR.

[No. 409]

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

*Washington, April 29, 1915.*

REGISTERS AND RECEIVERS,

*United States Land Offices.*

SIRS: The act approved March 4, 1915 (Public, No. 331), entitled "An act for the relief of homestead entrymen under the reclamation projects of the United States," reads as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person who has made homestead entry under the act of June seventeenth, nineteen hundred and two (Thirty-second Statutes at Large, page three hundred and eighty-eight), for land believed to be susceptible of irrigation which at the time of said entry was withdrawn for any contemplated irrigation project, may relinquish the same, provided that it has since been determined that the land embraced in such entry or all thereof in excess of twenty acres is not or will not be irrigable under the project, and in lieu thereof may select and make entry for any farm unit included within such irrigation project as finally established, notwithstanding the provisions of section five of the act of June twenty-fifth, nineteen hundred and ten, entitled "An act to authorize advances to the reclamation fund," and so forth, and acts amendatory thereof: *Provided,* That such entryman shall be given credit on the new entry for the time of bona fide residence maintained on the original entry.

2. Applications to make new entry under the provisions of this act must be on the form provided for homestead applications, must contain the land-office number and the description of the former entry, a relinquishment of the former entry and an affidavit by the applicant showing the facts upon which he claims to be entitled to the provisions of this act. The showing filed by the applicant must be

immediately transmitted to the project manager of the Reclamation Service for his report and recommendation thereon, and upon the receipt thereof you will transmit all the papers to this office with your recommendation thereon. You will indorse on the face of each such application the fact that it is under the provisions of the act of March 4, 1915 (Public, No. 331).

3. Where such application is filed in the same land district in which the former entry was made it will take the serial number of the old entry. Where the area of the farm unit applied for is in excess of the area of the former entry, fee and commissions for such excess area must accompany the application.

4. This act permits a new entry only where the former entry was made subject to the provisions of the act of June 17, 1902 (32 Stat., 388), for land which was believed to be susceptible of irrigation, where it has since been determined that the land embraced in such entry or all thereof in excess of 20 acres is not or will not be irrigable under the project. This act permits the new entry to be made only within the same project as the former entry, nor may any land be entered under this act until such land has been designated as a farm unit. Any such farm unit entered under this act will be subject to confirmation to a new farm unit, in the discretion of the department, and will be subject to all the charges, terms, conditions, and limitations of the act of June 17, 1902 (32 Stat., 388), and acts supplemental thereto and amendatory thereof.

5. In order that there may be uniformity in the administration of this act, no applications hereunder will be allowed by local officers on their own initiative, but all will be forwarded to the General Land Office for consideration.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved:

BO SWEENEY,  
*Assistant Secretary.*

#### ENLARGED HOMESTEAD—INDIAN LANDS—DESIGNATION.

##### CIRCULAR.

[No. 408]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., April 29, 1915.*

REGISTER AND RECEIVER,  
*United States Land Offices.*

SIRS: 1. Where an act opening ceded Indian lands to entry permits appropriation thereof under one of the enlarged homestead acts,

but requires payment of part of the price at the time of entry, applications for original or additional entry, filed with petitions for designation, as provided by the act of March 4, 1915 (Public, No. 299), must be accompanied by deposit of said initial payment as well as of the fee and commissions.

2. The entire amount paid will be carried in the "Unearned money" account, and will be repaid by the Receiver, if the entry be not placed of record, on account of non-designation of the land or for any other reason.

3. A person desiring to make original or additional entry for such lands, but not seeking a preference right of entry, may, without regard to the act of March 4, 1915, forward to the Secretary of the Interior, or to the Director of the U. S. Geological Survey, a petition for designation, so far as same is necessary, and no money need be paid in connection therewith. It is advisable to state in such petitions the reasons for forwarding them in the manner indicated.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved, April 29, 1915:

Bo SWEENEY,  
*Assistant Secretary.*

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## RECLAMATION AND CULTIVATION—SEC. 8, ACT AUGUST 13, 1914.

### REGULATIONS.

DEPARTMENT OF THE INTERIOR,  
UNITED STATES RECLAMATION SERVICE,  
*Washington, May 3, 1915.*

General Rules and Regulations under section 8 of the act of August 13, 1914 (38 Stat., 686).

1. Section 8 of said act is as follows:

That the Secretary of the Interior is hereby authorized to make general rules and regulations governing the use of water in the irrigation of the lands within any project, and may require the reclamation for agricultural purposes and the cultivation of one-fourth the irrigable area under each water-right application or entry within three full irrigation seasons after the filing of water-right application or entry, and the reclamation for agricultural purposes and the cultivation of one-half the irrigable area within five full irrigation seasons after the filing of the water-right application or entry, and shall provide for continued compliance with such requirements. Failure on the part of any water-right applicant or entryman to comply with such requirements shall render his application or entry subject to cancellation.

2. A definition of the expression "reclamation for agricultural purposes and cultivation" has already been announced in paragraph

56 of the General Reclamation Circular, as amended by the order of the Secretary of June 4, 1914, as follows:

To comply with the provisions of the reclamation law requiring the reclamation of one-half the irrigable area of an entry made subject to the provisions of that law, the land must have been cleared of brush, trees, and other incumbrances, provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least two years next preceding the date of approval by the project manager of proof of reclamation, except as prevented by hailstorm or flooding, a satisfactory crop must be grown thereon. A satisfactory crop during any year shall be any one of the following: (a) a crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (b) a substantial stand of alfalfa, clover, or other perennial grass substantially equal in value to alfalfa or clover, or, (c) a season's growth of orchard trees, or vines, of which 75 per cent shall be in a thrifty condition.

3. Under the provisions of said section 8 reclamation and cultivation as thus described shall be required to the extent of one-fourth the irrigable area under each water-right application or entry within three full irrigation seasons after the filing of water-right application or entry and of one-half such irrigable area within five full irrigation seasons after said filing, and it is furthermore required that the land so reclaimed and cultivated shall continue to be reclaimed and cultivated. Failure on the part of any water-right applicant or entryman to comply with these requirements shall render his application or entry subject to cancellation.

4. These regulations will apply to all water-right applicants or entrymen hereafter filing applications or entries under the provisions of the Reclamation Act and also to all water-right applicants or entrymen who have heretofore filed such applications or entries if they have accepted the provisions of the Reclamation Extension Act, as provided by section 14 thereof.

5. In the case of those who have heretofore filed applications or entries the first full irrigation season affecting the lands under these regulations shall be the irrigation season in the year 1915.

A. P. DAVIS,

*Director and Chief Engineer.*

Approved, May 3, 1915:

Bo SWEENEY,

*Assistant Secretary.*

# SUGGESTIONS TO HOMESTEADERS AND PERSONS DESIRING TO MAKE HOMESTEAD ENTRIES.

## CIRCULAR.

[No. 414]

### DEPARTMENT OF THE INTERIOR,

### GENERAL LAND OFFICE,

*Washington, D. C., June 1, 1915.*

[In this revision of the Suggestions to Homesteaders a great many paragraphs have been changed from the form in which they appeared in that of January 2, 1914 (43 L. D., 1), namely, those numbered 2, 3, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 21, 22, 24, 25, 26, 28, 32, 33, 34, 35 (b), 36, 37, 40, 43, 44, 46, 47, and 48.]

1. Persons desiring to make homestead entries should first fully inform themselves as to the character and quality of the lands they desire to enter, and should in no case apply to enter until they have visited and fully examined each legal subdivision for which they make application, as satisfactory information as to the character and occupancy of public lands can not be obtained in any other way.

As each applicant is required to swear that he is well acquainted with the character of the land described in his application, and as all entries are made subject to the rights of prior settlers, the applicant can not make the affidavit that he is acquainted with the character of the land, or be sure that the land is not already appropriated by a settler, until after he has actually inspected it.

Information as to whether a particular tract of land is subject to entry may be obtained from the register or receiver of the land district in which the tract is located, either through verbal or written inquiry, but these officers must not be expected to give information as to the character and quality of unentered land or to furnish extended lists of lands subject to entry, except through plats and diagrams which they are authorized to make and sell as follows:

For a township diagram showing entered land only.....	\$1. 00
For a township plat showing form of entries, names of claimants, and character of entries.....	2. 00
For a township plat showing form of entries, names of claimants, character of entry, and number.....	3. 00
For a township plat showing form of entries, names of claimants, character of entry, number, and date of filing or entry, together with topography, etc....	4. 00

Purchasers of township diagrams are entitled to definite information as to whether each smallest legal subdivision, or lot, is vacant public land. Registers and receivers are therefore required in case of an application for a township diagram showing vacant lands to plainly check off with a cross every lot or smallest legal subdivision in the township which is not vacant, leaving the vacant tracts un-

checked. There is no authority for registers and receivers to charge and receive a fee of 25 cents for plats and diagrams of a section or part of a section of a township.

If because of the pressure of current business relating to the entry of lands registers and receivers are unable to make the plats or diagrams mentioned above, they may refuse to furnish the same and return the fee to the applicant, advising him of their reason for not furnishing the plats requested; that he may make the plats or diagrams himself or have same made by his agent or attorney; and that he may have access to the plats and tract books of the local land office for this purpose, provided such use of the records will not interfere with the orderly dispatch of the public business.

A list showing the general character of all the public lands remaining unentered in the various counties of the public-land States on the 30th day of the preceding June may be obtained at any time by addressing "The Commissioner of the General Land Office, Washington, D. C."

All blank forms of affidavits and other papers needed in making application to enter or in making final proofs can be obtained by applicants and entrymen from the land office for the district in which the land lies.

2. *Kind of land subject to homestead entry.*—All unappropriated surveyed public lands adaptable to any agricultural use are subject to homestead entry if they are not mineral or saline in character and are not occupied for the purposes of trade or business and have not been embraced within the limits of any withdrawal, reservation, or incorporated town or city; but homestead entries on lands within certain areas (such as lands in Alaska, lands withdrawn under the reclamation act, certain ceded Indian lands, lands within abandoned military reservations, agricultural lands within national forests, lands in western and central Nebraska, and lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, oil, gas, or asphaltic minerals) are made subject to the particular requirements of the laws under which such lands are opened to entry. None of these particular requirements are set out in these suggestions, but information as to them may be obtained by either verbal or written inquiries addressed to the register and receiver of the land office of the district in which such lands are situated.

#### HOW CLAIMS UNDER THE HOMESTEAD LAW ORIGINATE.

3. (a) Claims under homestead laws may be initiated either by settlement on surveyed or unsurveyed lands of the kind mentioned in the foregoing paragraph, or by the filing of a soldier's or sailor's declaratory statement, or by the presentation of an application to enter any surveyed lands of that kind.

(b) Under the law relating to ordinary lands a homestead entry is limited to 160 acres, but this area may sometimes be slightly exceeded where the tract is made up of irregular subdivisions. However, an entry of land which has been designated under one of the enlarged-homestead acts may contain 320 acres (see par. 43), and in western Nebraska 640 acres may be entered under the Kinkaid Act, explained in a special circular.

4. Settlement is initiated through the personal act of the settler placing improvements upon the land or establishing residence thereon; he thus gains the right to make entry for the land as against other persons. A settlement on any part of a surveyed quarter section subject to homestead entry gives the right to enter all of that quarter section, but if a settler desires to initiate a claim to surveyed tracts which form a part of more than one technical quarter he should define his claim by placing some improvements on each of the smallest subdivisions claimed. When settlement is made on unsurveyed lands the settler must plainly mark the boundaries of all lands claimed. Within a reasonable time after settlement actual residence must be established on the land and continuously maintained. Entry should be made within three months after settlement upon surveyed lands or within that time after the filing in the local land office of the plat of survey of lands unsurveyed when settlement was made. Otherwise, the preference right of entry may be lost. Under the act of August 9, 1912 (37 Stat., 267), settlement right on not exceeding 320 acres of lands designated by the Secretary of the Interior as subject to entry under the enlarged homestead law may be obtained by plainly marking the exterior boundaries of all lands claimed, whether surveyed or unsurveyed, followed by the establishment of residence, except as to lands designated under section 6 of said acts, where residence is not required, but where the settlement right is required to be initiated by plainly marking the exterior boundaries of the land claimed and the placing and maintenance of valuable improvements thereon.

5. Soldiers' and sailors' declaratory statements may be filed in the land office for the district in which the lands desired are located by any persons who have been honorably discharged after 90 days' service in the Army or Navy of the United States during the War of the Rebellion or during the Spanish-American War or the Philippine insurrection. Declaratory statements of this character may be filed either by the soldier or sailor in person or through his agent acting under a proper power of attorney, but the soldier or sailor must make entry of the land in person, and not through his agent, within six months from the filing of his declaratory statement, or he may make entry in person without first filing a declaratory statement if he so chooses. If a declaratory statement is filed by a soldier or

sailor in person, it must be executed by him before one of the officers mentioned in paragraph 16, in the county or land district in which the land is situated; if filed through an agent, the affidavit of the agent must be executed before one of the officers above mentioned, but the soldier's affidavit may be executed before any officer using a seal and authorized to administer oaths and not necessarily within the county or land district in which the land is situated. If the soldier dies without having filed application for entry following his declaratory statement, such entry may be made by his widow, or in case of her death or remarriage by his minor orphan children, but *not* by his heirs or devisees.

BY WHOM HOMESTEAD ENTRIES MAY BE MADE.

6. Homestead entries may be made by any person who does not come within either of the following classes:

(a) Married women, except as hereinafter stated.  
(b) Persons who have already made homestead entry, except as hereinafter stated.

(c) Foreign-born persons who have not declared their intention to become citizens of the United States.

(d) Persons who are the owners of more than 160 acres of land in the United States.

(e) Persons under the age of 21 years who are not the heads of families, except miners who make entry as heirs, as hereinafter mentioned.

(f) Persons who have acquired title to or are claiming, under any of the agricultural public-land laws, through settlement or entry made since August 30, 1890, any other lands which, with the lands last applied for, would amount in the aggregate to more than 320 acres. Exception is made, however, as to an entry under one of the enlarged homestead acts; such an entry may be allowed, provided that its area does not make up, with the party's other claims under the agricultural public-land laws, more than 480 acres, and that said other claims do not contain as much as 320 acres.

7. A married woman who has all of the other qualifications of a homesteader may make a homestead entry under any one of the following conditions:

(a) Where she has been actually deserted by her husband.

(b) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.

(c) Where the husband is confined in a penitentiary and she is actually the head of the family.

(d) Where the married woman is the heir of a settler or contestant who dies before making entry.

(e) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time of the marriage; and this last condition does not apply if each party has had compliance with the law for one year next before the marriage and neither one abandons the land prior to filing application for entry.

8. The marriage of an entrywoman will not defeat her right to acquire title to the land if she continues to reside thereon and otherwise comply with the law; but ordinarily the failure of her husband to live upon the homestead with her is treated as an evidence of bad faith, requiring testimony for its rebuttal. Husband and wife can not maintain separate residences on their respective homestead entries, and if at the time of marriage each is holding an unperfected entry on which residence must be had in order to acquire title, they can not hold both entries unless they are entitled to the benefits of the act of April 6, 1914 (38 Stat., 312), explained in the next paragraph.

9. Where a homestead entryman and a homestead entrywoman intermarry after each has fulfilled the requirements of the law for one year, the husband may (under the provisions of the act mentioned) elect on which of the entries the home shall be made, after which their residence there shall constitute compliance with the residence requirements as to both homesteads. Instructions regarding the method of procedure under the act are found in a special circular. (43 L. D., 272.)

10. Where the wife of a homestead settler or entryman, while residing upon the homestead claim and prior to the submission of final proof, has been abandoned and deserted by her husband for more than one year, she may, under the provisions of the act of October 22, 1914 (38 Stat., 766), submit proof (by way of commutation or otherwise) on the entry and secure patent in her own name, being allowed credit for all residence and cultivation had and improvements made, either by herself or by her husband. As to the method of procedure under that act, a special circular is issued.

11. A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

12. A person serving in the Army or Navy of the United States may make a homestead entry if some member of his family is residing on the lands applied for, and the application and accompanying affidavits may be executed before the officer commanding the branch of the service in which he is engaged.

13. (a) A second homestead entry may be made by a person who commuted his first entry before June 5, 1900, or who paid the Indian price of the land first entered before May 17, 1900. See acts of June 5, 1900 (31 Stat., 267), and May 22, 1902 (32 Stat., 203), and act of May 17, 1900 (31 Stat., 179). Where a person has made homestead entry for 160 acres and perfected it in any other manner, his right both under the general homestead law and under the enlarged homestead act is exhausted, excepting only his right to make additional entry under the enlarged homestead act for a tract contiguous to the one first entered, provided both have been designated as subject thereto—and except that he may, under the Kinkaid Act, enter not exceeding 480 acres in western Nebraska.

(b) Where a person has made a homestead entry or entries but failed to perfect them, his right to make another homestead entry is governed by the act of Congress of September 5, 1914, which provides that the applicant must show to the satisfaction of the Secretary of the Interior that the prior entry or entries were made in good faith, were lost, forfeited, or abandoned because of matters beyond his control, and that he has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. A special circular is issued regarding the procedure under said act.

(c) Any person otherwise qualified, who has made final proof for less than 160 acres under the homestead laws, may make an additional entry for such an amount of public lands as will, when added to the amount for which he has already made proof, not exceed in the aggregate 160 acres; the applicant therefor must give such data as will serve to identify his first filing. Residence, cultivation, and improvement must be performed as in the case of an original entry.

14. An additional homestead entry may be made by a person for such an amount of public lands adjoining lands then owned and occupied by him under his original entry as will, when added to such adjoining lands, not exceed in the aggregate 160 acres. An entry of this kind may be made by any person who has not acquired title to and is not, at the date of his application, claiming under any of the agricultural public-land laws, through settlement or entry made since August 30, 1890, any other lands which, with the land then applied for, would exceed in the aggregate 320 acres, but the applicant will not be required to show any of the other qualifications of a homestead entryman. In connection with such an entry, all residence and cultivation may be had (before or after its date) on the original tract, provided the entryman continues to own it during the period in question. As to additional entries under the enlarged homestead acts, see paragraph 47.

15. An adjoining farm entry may be made for such an amount of public lands lying contiguous to lands owned and resided upon by the applicant as will not, with the lands so owned and resided upon, exceed in the aggregate 160 acres; but no person will be entitled to make entry of this kind who is not qualified to make an original homestead entry. A person who has made one homestead entry, although for a less amount than 160 acres, and perfected title thereto, is not qualified to make an adjoining farm entry. In connection with an entry of this character, there must be shown the required amount of residence and cultivation after the date thereof, but both residence and cultivation may be had on the original tract.

#### HOW HOMESTEAD ENTRIES ARE MADE.

16. A homestead entry may be made by the presentation to the land office of the district in which the desired lands are situated of an application properly prepared on blank forms prescribed for that purpose and sworn to before either the register or the receiver, or before a United States commissioner, or the judge or clerk of a court of record, in the county or parish in which the land lies, or before any officer of the classes named who resides in the land district and nearest or most accessible to the land, although he may reside outside of the county in which the land is situated. An application is not acceptable if executed more than 10 days before its filing at the land office.

17. Each application to enter and the affidavits accompanying it must recite all the facts necessary to show that the applicant is acquainted with the land; that the land is not, to the applicant's knowledge, either saline or mineral in character; that the applicant possesses all of the qualifications of a homestead entryman; that the application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation; that the applicant will faithfully and honestly endeavor to comply with the requirements of the law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that the applicant is not acting as the agent of any person, persons, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered or any part thereof; that the application is not made for the purpose of speculation, but in good faith to obtain a home for the applicant, and that the applicant has not directly or indirectly made, and will not make, any agreement or contract in any way or manner with any person or persons, corporation, or syndicate whatsoever by which the title he

may acquire from the Government to the lands applied for shall inure, in whole or in part, to the benefit of any person except himself.

18. All applications by persons claiming as settlers must, in addition to the facts required in paragraph 17, state the date and describe the acts of settlement under which they claim a preferred right of entry, and applications by the widows, devisees, or heirs of settlers must state facts showing the death of the settler and their right to make entry, that the settler was qualified to make entry at the time of his death, and that the heirs or devisees applying to enter are citizens of the United States or have declared their intentions to become such citizens, but they are not required to state facts showing any other qualifications of a homestead entryman, and the fact that they have made a former entry will not prevent them from making an entry as such heirs or devisees, nor will the fact that a person has made entry as the heir or devisee of the settler prevent him from making an entry in his own individual right if he is otherwise qualified to do so.

19. All applications by soldiers, sailors, or their widows, or the guardians of their minor children should be accompanied by proper evidence of the soldier's or sailor's service and discharge and of the fact that the soldier or sailor had not, prior to his death, made an entry in his own right. The application of the widow of the soldier or sailor must also show that she is unmarried and that the right has not been exercised by any other person. Applications for the children of soldiers or sailors must show that the father died without having made entry, that the mother died or remarried without making entry, and that the person applying to make entry for them is their legally appointed guardian.

20. Applications for entry must be accompanied by the proper fee and commissions. (See par. 41.) A receipt for the money is at once issued, but this is merely evidence that the money has been paid and as to the purpose thereof. If the application is allowed and the entry placed of record, formal notice of this fact is issued on the prescribed form; if the application is rejected or suspended, notice of such action is forwarded to the applicant as soon as practicable.

#### RIGHTS OF WIDOWS, HEIRS, OR DEVISEES UNDER THE HOMESTEAD LAWS.

21. If a homestead settler dies without having filed application for entry, the right to enter the land covered by his settlement passes to his widow. If there be no widow, said right passes to his heirs or devisees. See paragraph 4 for the general rules regarding settlement claims.

22. If a homestead entryman dies without having submitted final proof, his rights under the entry pass to his widow, or, if there be

none, then to his heirs or devisees. However, if all the heirs be minor children of the entryman or entrywoman, and their other parent be dead, the entry is not subject to devise. In such a case the right to a patent vests in the children at once upon proof only of the death of both parents and that they are the only children of the homesteader, provided, as to a male homesteader, that there be no widow. The law provides, in the alternative, that the executor, administrator, or guardian may, within two years after the death of the surviving parent, sell the land for the benefit of the children, in accordance with the law of the State where they are domiciled. In such cases it is required that there be furnished record evidence of an order for the sale made by a court of competent jurisdiction. In any event, publication and posting of notice of intention to submit proof or to ask issuance of patent to the purchaser is required.

23. If a contestant dies after having secured the cancellation of an entry, his right as a successful contestant to make entry passes to his heirs; and if the contestant dies before he has secured the cancellation of the entry he has contested, his heirs may continue the prosecution of his contest and make entry if they are successful in the contest. In either case, to entitle the heirs to make entry they must show that the contestant was a qualified entryman at the date of his death; and in order to earn a patent the heirs must comply with all the requirements of the law under which the entry was made, to the same extent as would have been required of the contestant had he made entry.

24. The unmarried widow, or, in case of her death or remarriage, the minor children of soldiers and sailors who were honorably discharged after 90 days' actual service during the War of the Rebellion, the Spanish-American War, or the Philippine insurrection may file a declaratory statement in the manner explained in paragraph 5 and make entry as such widow or minor children, if the soldier or sailor died without making entry or failed to perfect an entry and was, at the time of his death, qualified to make another. The minor children must make a joint entry through their duly appointed guardian. If the widow files a declaratory statement and dies without having applied for entry, entry may be made on behalf of the minor children, but *not* by her devisees or other heirs.

#### RESIDENCE AND CULTIVATION REQUIRED UNDER THE HOMESTEAD LAWS.

25. A homestead entryman must (except as to an adjoining farm homestead entry or an additional entry for land adjoining that first entered) establish residence upon the tract within six months after date of the entry, unless an extension of time is allowed, as explained in paragraph 35, and must maintain residence there for

a period of three years. However, he may have credit for residence as well as cultivation before the date of entry if the land was, during the period in question, subject to appropriation by him or included in an entry against which he had initiated a contest resulting afterwards in its cancellation. Moreover, he may absent himself for a portion or portions of each year after making entry and establishing residence, as more fully explained in paragraph 26.

When proof is submitted it must be shown that the homesteader is a citizen of the United States, provided, however, that a homestead entrywoman who is a citizen when she makes her filing and thereafter marries an alien need not show that her husband is an American citizen, but must show that he is entitled to become one.

26. During each year, beginning with the date of establishment of actual residence, the entryman may absent himself from the land for not more than two periods, aggregating as much as five months. In order to be entitled to such absences, the entryman need not file applications therefor, but must each time he leaves the land file at the local land office (by mail or otherwise) notice of the time of leaving; and upon his return to the land he must notify said office of the date thereof. If he has returned after an absence of less than five months and filed notice of his return, he may, without any intervening residence, again absent himself—pursuant to new notice—for the remaining part of five months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than five months.

27. (a) Cultivation of the land for a period of three years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed), where that manner of cultivation is necessary or generally followed in the locality.

During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, *and until final proof*, cultivation of not less than one-eighth must be had; these requirements are applicable to all homesteads, under the general law and under the enlarged homestead acts, excepting those under section 6 of said acts (see pars. 48 and 49); they do not apply to entries under the reclamation act or under the so-called Kinkaid Act, applicable to Nebraska.

(b) The Secretary of the Interior is authorized to reduce the requirements as to cultivation. This may be done, if the land en-

tered is so hilly or rough, the soil so alkaline, compact, sandy, or swampy, or the precipitation of moisture so light as not to make cultivation of the required amounts practicable, or if the land is generally valuable only for grazing. An application for reduction upon the grounds indicated must be filed at the proper local land office on the form prescribed therefor, and should set forth in detail the special physical conditions of the land on which claimant bases his right to a reduction.

A reduction may be allowed also if the entryman, after making entry and establishing residence, has met with misfortune which renders him reasonably unable to cultivate the prescribed area. In this class of cases an application for reduction is not to be filed, but notice of the misfortune and of its nature must be submitted to the register of the local land office, under oath, within 60 days after its occurrence; upon satisfactory proof regarding the misfortune at the time of submitting final proof a reduction in area of cultivation during the period of disability following the misfortune may be permitted.

(c) The homestead entryman must have a habitable house upon the land entered at the time of submitting proof. Other improvements should be of such character and amount as are sufficient to show good faith.

(d) By paragraph 15 of the instructions of November 1, 1913, the Secretary of the Interior (under his statutory authority to reduce the requirements as to cultivation) has prescribed the following rule to govern action on proofs submitted under the new law, where the homestead entry was made prior to June 6, 1912:

Respecting cultivation necessary to be shown upon such an entry, in all cases where, upon considering the whole record, the good faith of the entryman appears, the proof will be acceptable if it shows cultivation of at least one-sixteenth for one year and of at least one-eighth for the next year and each succeeding year until final proof, without regard to the particular year of the homestead period in which the cultivation of the one-sixteenth was performed.

(e) Entries made prior to June 6, 1912, may be perfected either by showing compliance with the requirements of the three-year act of June 6, 1912, or with the provisions of the old homestead law. The former law required five years' residence, there being no specific provision regarding the extent to which the entryman might absent himself; it made no requirement of cultivation of a specific proportion of the area of the entry, but the claimant was obliged to show such cultivation as was reasonable under the circumstances of the case.

(f) Where a qualified person settled upon a tract of unsurveyed public land, subject to settlement, prior to the passage of the act of June 6, 1912, but made entry after its enactment or may hereafter make entry, he may submit proof under said act or under

the law existing when he established his residence upon the land. The filing of a formal election is not required, but the designation of three-year or five-year proof in the notice to submit same may constitute such election.

28. A soldier or sailor of one of the classes mentioned in paragraph 5 who makes entry must begin his residence and cultivation of the land entered by him within six months from the date of filing his declaratory statement, but if he makes entry without filing a declaratory statement he must begin his residence within six months after the date of the entry. Thereafter he must continue both residence and cultivation for such period as will, when added to the time of his military or naval service (under enlistment or enlistments covering war periods), amount to three years; but if he was discharged on account of wounds or disabilities incurred in the line of duty, credit for the whole term of his enlistment may be allowed; however, no patent will issue to such soldier or sailor until there has been residence and cultivation by him for at least one year, nor until a habitable house has been placed upon the land. If the soldier's military service was sufficient in duration to require only one year's residence and improvement upon the claim, the entryman must perform such an amount of cultivation as to evidence his good faith as a homestead claimant. If his military service was of such limited duration as to require more than one year's residence upon the claim, he will be required to perform cultivation to the extent of one-sixteenth of the area of the entry, beginning with the second year thereof, and if proof is not submitted before the third year, he must also cultivate at least one-eighth, beginning with the third year of the entry and thereafter until final proof.

No credit can be allowed for military service where commutation proof is offered.

29. A soldier or sailor making entry during his enlistment in time of peace is not required to reside personally on the land, but may receive patent if his family maintain the necessary residence and cultivation until the entry is 3 years old or until it has been commuted; but a soldier or sailor is not entitled to credit on account of his military service in time of peace. If such soldier has no family, there is no way by which he can make entry and acquire title during his enlistment in time of peace.

30. Widows and minor orphan children of soldiers and sailors who make entry based on the husband's or father's military or naval service must conform to the requirements specified for the soldier or sailor in paragraph 28.

31. Persons who make entry as the widows, heirs, or devisees of settlers are not required to reside upon the land entered by them, but they must improve and cultivate it for such period as, added to the

time during which the settler resided on and cultivated the land, will make the required period of three years, and the cultivation must be to the extent required by the law under which the proof is offered. Commutation proof may, however, be made upon showing 14 months' actual residence and cultivation had either by the settler or the heirs, devisee, or widow, or in part by the settler and in part by the widow, heirs, or devisee.

32. Persons succeeding as widow, heirs, or devisees to the rights of a homestead entryman are not required to reside upon the land covered by the entry, but they must cultivate it as required by law for such period as will, added to the entryman's period of compliance with the law, aggregate the required term of three years. They are allowed a reasonable time after the entryman's death within which to begin cultivation, proper regard being had to the season of the year at which said death occurred. If they desire to commute the entry they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived. They must in all cases show that they are citizens of the United States, regardless of the question whether the entryman was himself a citizen, unless they are commuting an entry made before June 6, 1912, when a declaration of intention is sufficient.

33. Homestead entrymen are not entitled to any special privileges whatsoever in connection with their claims by reason of the fact that they are appointed or elected to public offices, the duties of which require their residence elsewhere than on the homesteads. The sole exception to this rule is that a person who made entry before June 6, 1912, and was elected to such office after establishing residence upon the land in good faith may be accorded credit for the periods of his absences if he submits proof under the old five-year law.

34. Neither residence nor cultivation by an insane homestead entryman is necessary after he becomes insane, if such entryman made entry and established residence before he became insane and complied with the requirements of the law up to the time his insanity began. Proof on the entry may be submitted by his duly appointed guardian or committee.

35. (a) Where, for climatic reasons, or on account of sickness, or other unavoidable cause, residence can not be established on the land within six months after the date of the entry, additional time, not exceeding six months, may be allowed. An application for such extension must include the affidavits of the entryman and two witnesses acquainted with the facts, which may be executed before any officer authorized to administer oaths and having a seal of office, though outside of the county or land district where the entry is situated. The application should set forth in detail the grounds

upon which it is based, including a statement as to the probable duration of the hindering causes and the date when the claimant may reasonably expect to establish his residence.

If the extension is granted, it protects the entry from contest on the ground of the homesteader's failure to establish residence within the first six-months' period, unless it be shown that the order for extension was fraudulently obtained. But the failure of the entryman to apply for an extension of time does not forfeit his right to show, in defense of a contest, the existence of conditions which might have been made the basis for such an application.

(b) Leave of absence for one year or less may be granted by the register and receiver of the local land office to entrymen who have established actual residence on the lands in cases where total or partial failure or destruction of crops, sickness, or other unavoidable casualty has prevented the entryman from supporting himself and those dependent on him by cultivation of the land. Application for such leave of absence must be sworn to by the applicant and corroborated by at least one witness in the land district or county within which the entered lands are located before an officer authorized to administer oaths and having a seal. It must describe the entry and show the date of establishing residence on the land and the extent and character of the improvements and cultivation performed by applicant. It must also set forth fully the facts on which the claimant bases his right to leave of absence, and where sickness is given as the reason a certificate signed by a reputable physician should be furnished if practicable. The period during which a homesteader is absent from his claim pursuant to a leave duly granted can not be counted in his favor.

#### COMMUTATION OF HOMESTEAD ENTRIES.

36. (a) All original, second, and additional homestead, and adjoining farm entries may be commuted, except such entries as are made under particular laws which forbid their commutation.

(b) The entryman, or his statutory successor, must, as a general thing, show substantially continuous residence upon the land, maintained until the submission of the proof or filing of notice of intention to submit same, the existence of a habitable house upon the claim, and cultivation of not less than one-sixteenth of its acreage. However, the proof may be accepted where actual residence for the required period is shown, even though slightly broken, provided it be in reasonably compact periods; and the failure to continue the residence until filing of notice to submit proof will not prevent its acceptance if the Land Department be fully satisfied of entryman's good faith, and provided no contest or adverse proceeding shall have been initiated for default in residence, or other good cause, prior to filing such notice. Credit for residence and cultivation before the

date of entry may be allowed under the conditions, explained in paragraph 25, as to three-year proof.

(c) Where a contest is initiated against an entry, prior to filing of notice to submit commutation proof, the entry will be considered under sections 2291 and 2297, Revised Statutes, as amended, and the homesteader's absence will not be excused upon the ground that he has complied with the law for 14 months and is under no obligation to further reside upon the land. However, a contest for abandonment can not be maintained if the absence after the 14 months' residence is pursuant to a leave of absence regularly and properly granted under the act of March 2, 1889, or under conditions which would have entitled the entryman to such leave upon formal application therefor, and such absence will not prevent the submission of acceptable commutation proof.

(d) An entryman submitting commutation proof may add together, to make up the 14 months, periods of residence before and after an absence under a leave of absence regularly granted, or an absence of not exceeding five months of which he had given notices as provided by the act of June 6, 1912.

(e) In cases where the entry was made before June 6, 1912, commutation proof may be submitted under the law theretofore in force.

(f) A person submitting commutation proof must, in addition to certain fees, pay the price of the land; this is ordinarily \$1.25 per acre, but is \$2.50 per acre for lands within the limits of certain railroad grants. The price of certain ceded Indian lands varies according to their location, and inquiry should be made regarding each specific tract.

(g) Where the entry was made after June 6, 1912, the claimant must show full citizenship, as in case of three-year proof; if the entry was made before that date, it is sufficient if the claimant has declared his intention to become a citizen.

(h) The provisions of law explained in paragraph 27 (f) apply to commutation proof also.

(i) Commutation proof can not be made on homestead entries allowed under the act of April 28, 1904 (33 Stat., 547), known as the Kinkaid Act; entries under the reclamation act of June 17, 1902 (32 Stat., 388); entries under the enlarged homestead acts (post, par. 43 et seq.); entries allowed on coal lands under the act of June 22, 1910 (36 Stat., 583), so long as the land is withdrawn or classified as coal; additional entries allowed under the act of April 28, 1904 (33 Stat., 527); second entries allowed under the act of June 5, 1900 (31 Stat., 267); second entries allowed under the act of May 22, 1902 (32 Stat., 203), when the former entry was commuted; or entries within forests, under the act of June 11, 1906 (34 Stat., 233).

37. Either final or commutation proof may be made at any time when it can be shown that there is a habitable house upon the land

and that the required residence and cultivation have been had. Proof on an entry made before June 6, 1912, may be submitted within seven years after its date, though it be submitted under the three-year act; proof on an entry made after June 6, 1912, must be submitted within five years, except under the conditions explained in paragraph 27 *f*. Failure to submit proof within the proper period is ground for cancellation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued, and the case referred to the board of equitable adjudication for confirmation. See also paragraph 27 *e*.

38. (a) Final proof must be made by the entrymen personally or their widows, heirs, or devisees, and can not be made by agents, attorneys in fact, administrators, or executors, except as explained in paragraphs 10, 22, and 34. Final proof can be made only by citizens of the United States.

(b) Where entries are made and proof offered for minor orphan children of soldiers or sailors the minors may be represented by their guardian.

#### HOW PROOFS MAY BE MADE.

39. Final or commutation proofs may be made before any of the officers mentioned in paragraph 16 as being authorized to administer oaths to applicants.

Any person desiring to make homestead proof should first forward a written notice of his desire to the register and receiver of the land office, giving his post-office address, the number of his entry, the name and official title of the officer before whom he desires to make proof, the place at which the proof is to be made, and the name and post-office addresses of at least four of his neighbors who can testify from their own knowledge as to facts which will show that he has in good faith complied with all the requirements of the law.

40. The register will issue a notice naming the time and place for submission of proof and cause same to be published at entryman's expense for 30 days preceding submission of proof in the newspaper designated by the register. If this be a daily paper, the publication must be inserted in 30 consecutive issues; if daily except Sunday, in 26; if weekly, in 5; and if semiweekly, in 9 consecutive issues.

The first day of publication must be at least 30 days before the date set for proof, and a copy of the notice must be posted in a conspicuous place in the office of the register for at least 30 days before said date.

The homesteader must arrange with the publisher for publication of the notice of intention to make proof and make payment therefor directly to him. The register will be responsible for the correct preparation of the notice.

On the day named in the notice the entryman must appear before the officer designated to take proof with at least two of the witnesses

named in the notice; but if for any reason the entryman and his witnesses are unable to appear on the date named, the officer should continue the case from day to day until the expiration of 10 days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is possible to do so, appear on the day mentioned in the notice.

#### FEES ON ENTRIES AND FINAL PROOFS.

41. *Fees and commissions.*—When a homesteader applies to make entry he must pay in cash to the receiver a fee of \$5 if his entry is for 81 acres or less, or \$10 if he enters more than 81 acres. And in addition to this fee he must pay, both at the time he makes entry and final proof, a commission of \$1 for each 40-acre tract entered outside of the limits of a railroad grant and \$2 for each 40-acre tract entered within such limits. Fees under the enlarged-homestead act are the same as above, but the commissions are based upon the area of the land embraced in the entry. (See par. 43.) Where an entry is commuted no commissions are payable, except in connection with certain ceded Indian lands, as to which inquiry must be made specifically at the proper local land offices. On all final proofs made before either the register or receiver, or before any other officer authorized to take proofs, the register and receiver are entitled to receive 15 cents for each 100 words reduced to writing, and no proof can be accepted or approved until all fees have been paid.

In all cases where lands are entered under the homestead laws in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming the commissions due to the register and receiver on entries and final proofs, and the testimony fees under final proofs, are 50 per cent more than those above specified, but the entry fee of \$5 or \$10, as the case may be, is the same in all the States.

Remittances of moneys to the local land offices must be made in cash or currency; but certified checks when drawn in favor of the receiver of public moneys on National and State banks and trust companies, which can be cashed without cost to the Government, can be used. Likewise, United States post-office orders are acceptable when they are made payable to the receiver and are drawn on the post office at the place where the receiver is located.

#### ALIENATION OF LAND BY HOMESTEADER.

42. The alienation of all or any part of the land embraced in a homestead prior to making proof, except for the public purposes mentioned in section 2288, Revised Statutes, will prevent the entryman from making satisfactory proof, since he is required to swear that he has not alienated any part of the land except for the purposes mentioned in section 2288, Revised Statutes.

A mortgage by the entryman prior to final proof for the purpose of securing money for improvements, or for any other purpose not inconsistent with good faith, is not considered such an alienation of the land as will prevent him from submitting satisfactory proof. In such a case, however, should the entry be canceled for any reason prior to patent, the mortgagee would have no claim on the land or against the United States for the money loaned.

*Alienation after proof and before patent.*—The right of a homestead entryman to patent is not defeated by the alienation of all or a part of the land embraced in his entry after the submission of final proof and prior to patent, provided the proof submitted is satisfactory. Such an alienation is, however, at the risk of the entryman, for if the reviewing officers of the Land Department subsequently find the final proof so unsatisfactory that it must be wholly rejected and new proof required, the entryman can not then truthfully make the nonalienation affidavit required by section 2291, Revised Statutes, and his entry must in consequence be canceled. The purchaser takes no better title than the entryman had, and if the entry is canceled the purchaser's title must necessarily fail.

#### ENLARGED HOMESTEADS.

43. The acts of February 19, 1909 (extended by later legislation to additional States), and of June 17, 1910 (36 Stat., 531), provide for the making of homestead entries for areas of not exceeding 320 acres of public land in the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, designated by the Secretary of the Interior as nonmineral, nontimbered, nonirrigable. As to Idaho, the act of June 17, 1910, provides that the lands must be "arid."

The terms "arid" or "nonirrigable" land, as used in these acts, are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as "dry farming," and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

Therefore lands containing merchantable timber, mineral lands, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply, may not be entered under these acts. Minor portions of a legal subdivision susceptible of irrigation from natural sources, as, for instance, a spring, will not exclude such subdivision from entry under these acts, provided, however, that no one entry shall embrace in the aggregate more than 40 acres of such irrigable land.

44. *Designation of lands.*—From time to time lists designating the lands which are subject to entry under these acts are sent to the registers and receivers in the States affected, and they are instructed immediately upon the receipt of such lists to note the same upon their tract books. In the order of designation, a date is fixed on which it will become effective, and at that time the land becomes subject to entry under the act.

The act of Congress of March 4, 1915 (38 Stat., 1162), provides that a person, pursuant to whose petition unappropriated land is designated under the enlarged-homestead act, may be allowed a preference right of entry therefor. The instructions prescribing the procedure under said act are found in a special circular.

The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above acts the designation may be canceled; but where an entry is made in good faith under the provisions of these acts, such designation will not thereafter be modified to the injury of anyone who in good faith has acted upon such designation. Each entryman must furnish affidavit as required by section 2 of the acts.

45. *Compactness—Fees.*—Lands entered under the enlarged-homestead acts must be in a reasonably compact form and in no event exceed  $1\frac{1}{2}$  miles in length.

The acts provide that the fees shall be the same as those now required to be paid under the homestead laws; therefore, while the fees may not in any one case exceed the maximum fee of \$10 required under the general homestead law, the commissions will be determined by the area of the land embraced in the entry.

46. Applications to make entry under these acts must be submitted on forms prescribed by the General Land Office; in case of an original entry, Form 4-003, and of an additional entry, Form 4-004.

The affidavit of an applicant as to the character of the land must be corroborated by two witnesses. It is not necessary that such witnesses be acquainted with the applicant, and if they are not so acquainted their affidavit should be modified accordingly.

47. (a) Under section 3 of the enlarged-homestead acts a person who has entered less than 320 acres of land which is of the character described therein, and which has been so designated by the Secretary of the Interior, may make entry of adjoining lands, also so designated, which will not, together with the tract first entered, exceed 320 acres in area or have a greater extreme length than  $1\frac{1}{2}$  miles. Attention of persons desiring to petition for designation of lands with a view to such entry is especially directed to the fact that an additional entry can not be allowed unless the tract first entered, as well as the one sought to be added, is designated, and therefore the petition should in all cases cover so much of both tracts as has not

already been designated. Where proof has not already been submitted on the original claim at the time application for additional entry is filed, residence upon and cultivation of the tract first entered will be accepted as equivalent to residence upon and cultivation of the additional.

(b) Where a person prior to June 6, 1912, made entry under the general provisions of the homestead laws, and before submission of proof on said entry made an additional entry under said section 3, the following rules govern the requirements as to the cultivation and residence to be shown by him on submission of proof:

(c) He may show compliance with the requirements of the law applicable to his original entry, and that, after the date of additional entry, he cultivated, in addition to such cultivation as was relied upon and used in perfecting title to the original entry, an amount equal to one-sixteenth of the area of the additional entry for one year, not later than the second year of such additional entry, and one-eighth the following year and each succeeding year until proof submitted; however, the rules explained in paragraph 27 (d) are applicable to such cases. The cultivation in support of the additional entry may be maintained upon either entry.

(d) When proof is submitted on both entries at the same time, he may show the cultivation of an amount equal to one-sixteenth of the combined area of the two entries for one year, increased to one-eighth the succeeding year, and that such latter amount of cultivation has continued until offer of proof. If cultivation in these amounts can be shown, proof may be submitted without regard to the date of the additional entry, i. e., the required amount of cultivation may have been performed in whole or in part on the original entry before the additional entry was made, and proof on the additional need be deferred only until the showing indicated can be made. Such combined proof may be submitted not later than seven years from the date of the original entry.

(e) In instances where proof is first made on the original entry meeting the requirement of the homestead law respecting residence, no further showing in this particular will be exacted in making proof upon the additional entry; neither will a period of residence be exacted in proof upon the combined entry in excess of that required under the original entry.

(f) As above indicated, persons who have already submitted proof on their original entries are not, for that reason, deprived of the privilege of making additional entries. They are, however, required to show that they still own and occupy (not necessarily reside upon) the lands first entered; in submitting proof on the additional filings, they are accorded credit for all residence on either tract, but must show cultivation of the additional tract itself to the extent and for the period (after the date of the additional entry) required by law.

A special circular is issued under the act of March 3, 1915, allowing additional entries in such cases.

#### ENTRIES NOT REQUIRING RESIDENCE.

48. The sixth section of the act of February 19, 1909 (35 Stat., 639), provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as will render continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of that act; with the exception, however, that entrymen of such lands will not be required to prove continuous residence thereon. This act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the act; and no attempt will be made at this time to determine how far from the land an entryman will be allowed to reside, as it is believed that the proper determination of that question will depend upon the circumstances of each case.

During the second year of the entry at least one-eighth of the area must be cultivated, and during the third, fourth, and fifth years, and until submission of final proof, one-fourth of the area entered must be cultivated. Proof may be submitted on entries of this class within seven years after their dates.

The rules relating to petitions for designation of lands, referred to in paragraphs 44 and 47, apply to section 6 of the enlarged homestead act; applications to make entry thereunder will not be received until the date fixed in the order designating the land as subject to entry under said section, except when accompanied by petitions for designation, complying with the rules with reference thereto.

49. The sixth section of the act of June 17, 1910 (36 Stat., 531), provides for designation of 320,000 acres of land in the State of Idaho of the same character contemplated by section 6 of the act of February 19, 1909. The law as to entries for these lands and manner of perfecting title is the same, except in one respect, as that referring to the Utah lands, and the provisions of the last paragraph hereof apply to the Idaho act except on that point. The Idaho act provides that:

The entryman shall reside not more than 20 miles from (the) land, and be engaged personally in preparing the soil for seed, seeding, cultivating, and harvesting crops upon the land during the usual seasons for such work, unless prevented by sickness or other unavoidable cause.

It is further provided, however, by the act that:

Leave of absence from a residence established under this section may be granted upon the same terms and conditions as are required of other homestead entrymen.

50. The acts provide that any person applying to enter land under the provisions thereof shall make and subscribe before the proper

officer an affidavit, etc. The term "proper officer," as used herein, is held to mean any officer authorized to take affidavits or proof in home-  
stead cases.

CLAY TALLMAN,  
*Commissioner.*

Approved:

Bo SWEENEY,  
*Assistant Secretary.*

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## TIMBER TRESPASS—MEASURE OF DAMAGES.

### INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, June 22, 1915.*

#### CHIEFS OF FIELD DIVISIONS.

SIRS: On February 16, 1914 (43 L. D., 106), the First Assistant Secretary of the Interior rendered a decision overruling the rule governing the measure of damages in innocent timber trespass cases which had been established in the case of John W. Henderson on April 1, 1912 (40 L. D., 518), and directed that thereafter the measure of damages in that class of cases should be the stumpage or standing value of the timber as applied prior to the rendering of the latter mentioned decision. On March 25, 1914, copies of the decision of February 16, 1914, *supra*, were furnished you with directions that you govern yourselves in accordance with the directions contained therein.

The Department of Justice and the Solicitor of the Treasury have, however, adopted the severed value rule and maintained the attitude that an offer of settlement for less than the severed value does not represent the full measure of damages in an innocent timber trespass case. The Department of the Interior, while it adheres in principle to the correctness of the rule as laid down in its decision of February 16, 1914, *supra*, believes that in deference of the views of the other Executive Departments of the Government dealing with the same subject matter, this office should demand the severed value in innocent timber trespass cases until the question can be finally and authoritatively adjudicated by the courts.

In view of the foregoing, you are hereby directed to hereafter demand the severed value in all cases of innocent timber trespass, unless otherwise instructed. A test suit will be instituted as soon as a proper case can be presented in accordance with the directions of the Department.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved, June 22, 1915:

A. A. JONES,  
*First Assistant Secretary.*

**CHARLIE GEORGE ET AL.***Decided March 13, 1915.***ALASKA INDIAN ALLOTMENT—ACT OF MAY 17, 1906—TIMBER TRESPASS.**

An allotment to an Indian or Eskimo in Alaska under the act of May 17, 1906, creates a perpetual reservation of the lands for the allottee and his heirs, but the title to the lands remains in the United States; and money recovered for a timber trespass upon such lands does not go to the allottee, but must be deposited to the credit of the United States.

*JONES, First Assistant Secretary:*

Charlie George and Albert Mills have appealed from the decision of the Commissioner of the General Land Office, dated July 9, 1913, ordering money recovered for timber trespass upon their allotments to be deposited to the credit of the United States.

The material facts in this case are that, on March 23, 1909, the appellants filed in the Juneau, Alaska, land office their applications for allotments, under the act of May 17, 1906 (34 Stat., 197), which were approved on June 4, 1913, by the Secretary of the Interior. In the meantime, a timber trespass was committed on these lands, for which \$1,376.77 was deposited and transmitted to the register of the land office at Juneau. As hereinbefore stated the matter is before the Department upon appeal by George and Mills from the order of the Commissioner directing the deposit of this money to the credit of the United States.

An Indian allotment under the act of May 17, 1906, while a perpetual reservation to the allottee and his heirs of the land, conveys no title. The legal title remains in the United States and will so remain unless Congress shall otherwise provide. The money received for the timber trespass upon the allotted lands was therefore properly held by the Commissioner to be public money of the United States, and the equitable claim of the appellants thereto is a matter for the consideration of and determination by Congress.

The decision appealed from is affirmed.

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**THOMAS HALL.***Instructions, March 31, 1915.***REPAYMENT—RES JUDICATA.**

Where repayment of moneys paid in connection with a rejected timber and stone application was denied, in accordance with the rule then in force, on the ground of fraud in connection with the application, the fact that such rule was subsequently changed will not justify reconsideration of the case with a view to allowance of repayment.

*JONES, First Assistant Secretary:*

On August 17, 1909, this Department denied repayment of \$300, paid by Thomas Hall under his rejected timber and stone application,

on the ground that he made false statements as to the character of the land applied for.

On February 12, 1915, you [Commissioner of the General Land Office] again forwarded Hall's application, with recommendation for favorable reconsideration, and stated that "in view of the recent departmental decisions in cases of this character it would appear that, upon the present condition of the records a judicial finding of fraud will not lie."

The rule in force at the time this application for repayment was presented, and under which it was rejected, prevented an applicant for repayment from controverting the ground on which his entry was canceled. Mary O. Lyman (24 L. D., 493); John Birkholz (27 L. D., 59).

The fact that this rule was, after denial of repayment, changed by the decision in the case of Howard A. Robinson (43 L. D., 221), will not justify a reconsideration of the case or the allowance of repayment at this time.

It is a well-settled doctrine that a final adjudication will not be later disturbed because of a subsequent change in the construction of the law which governed the case at the time it was originally adjudicated. This rule has been generally enforced by this Department, even in cases where the Department's construction of statutes has been declared erroneous by the Supreme Court. (Frank Larson, 23 L. D., 452; *Mee v. Hughart et al.*, 23 L. D., 455.)

Inasmuch as Hall's application for repayment was finally rejected more than five years ago, after it had received full consideration, it is not believed good administration will, in the light of the authorities above cited, justify any further or different action thereon at this time; and for that reason, the application is herewith returned without approval.

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## ATTORNEYS—ADMISSION TO PRACTICE—RULE OF PRACTICE 87 AMENDED.

### CIRCULAR.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, April 9, 1915.

The SECRETARY OF THE INTERIOR.

SIR: Rule of Practice 87 provides:

Every attorney before practicing before the Department of the Interior must first file the oath prescribed by section 3478 of the Revised Statutes.

Many attorneys believe that the filing of the oath is all that is necessary to permit them to be admitted to practice. In order that

said rule may not mislead, I recommend that it be amended to read as follows:

RULE 87. Every attorney before practicing before the Department of the Interior and its bureaus must comply with the requirements of the regulations prescribed by the Secretary of the Interior pursuant to section 5 of the act of July 4, 1884 (23 Stat., 101).

Very respectfully,

CLAY TALLMAN, *Commissioner*.

Approved April 9, 1915:

ANDRIEUS A. JONES,

*First Assistant Secretary.*

FRED B. GARRETT ET AL.

*Decided May 4, 1915.*

CONFIRMATION—PROVISO TO SECTION 7, ACT OF MARCH 3, 1891.

The two-year period fixed by the proviso to section 7 of the act of March 3, 1891, begins to run from the date of the issuance of the "receiver's receipt upon the final entry"; and the mere offering of final proof by an entryman is not sufficient in and of itself to bring the entry within the operation of the statute.

LANE, *Secretary*:

The Solicitor for the Department of Agriculture has appealed from the decision of the Commissioner of the General Land Office, dated October 21, 1913, declining to institute adverse proceedings against the following homestead entries:

Fred B. Garrett, for the SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , and SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 34;

Hiram S. Kribs, for the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , and SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 22;

George W. Laingor, for the NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , and lots 3 and 4, Sec. 22;

William L. Berry, for the NE.  $\frac{1}{4}$ , Sec. 34;

Eckley C. Guerin, for the SW.  $\frac{1}{4}$ , Sec. 10;

George H. Guerin, for the NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , and lots 1 and 2, Sec. 22;

James H. McCloskey, for the E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , and lot 1, Sec. 15;

David N. McNair, for lots 1 and 2, and S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 10; and

George H. Guerin, jr., for the NW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , and NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 34—

all in T. 24 S., R. 9 W., Roseburg, Oregon, land district, and all included in the Umpqua National Forest, created by proclamation of March 2, 1907 (34 Stat., 3301), subsequent to the alleged dates of settlement by the entrymen.

The plat of survey of the lands described was filed October 9, 1909, and the several entries allowed during the same month. Commutation proof was submitted on four of the entries in March, 1910, upon one in October, 1910, and upon the remaining four in January, 1911. It has been ascertained by informal inquiry at the General Land Office that the purchase money was paid in the case of Garrett on April 5, 1910, and in the case of McCloskey on November 2, 1910, receiver's receipt issuing for the amount in each case. It appears from the records that in the other cases no receipts have been issued. The final certificates were withheld in all cases, a protest by the Forest Service having been filed against part of them, and a formal adverse report filed against all of the claims by a forest officer July 24, 1911.

The Commissioner of the General Land Office directed a field investigation, and adverse report by a special agent of the General Land Office against the entries was made July 12, 1912. The special agent recommended that adverse proceedings be had on the charge that the entrymen did not enter the land in good faith for the purpose of establishing a permanent home thereon or using the same for cultivation, and that the land is more valuable for timber than for agriculture.

The Department of Agriculture charged, among other things, that the land is for the most part nonagricultural in character, is heavily timbered, and that prior to the forest withdrawal, March 2, 1907, and for the first two years after the alleged settlement, no attempts at continuous residence were made. The attempted cultivation on the part of the entrymen is also questioned.

Upon consideration of the matter, the Commissioner of the General Land Office declined to institute adverse proceedings upon the charges described, and, as stated, the Solicitor for the Department of Agriculture has appealed from the action taken.

In so far as shown by the record now before the Department, the several settlements alleged were in the fall of the year 1906, shortly before the lands were included in the national forest, and for two years thereafter the parties were upon the land claimed by them for a few days or weeks only at a time, with several months intervening. The improvements made by them are alleged to range in value from \$200 to \$340. The lands are heavily timbered, containing from 5,000,000 to 8,000,000 feet, and of such character that if cleared only portions thereof would be susceptible of cultivation. Clearing of the land for cultivation would, it is stated, cost from \$150 to \$200 an acre. The clearing alleged to have been performed was meager, large trees and stumps generally being left, the part cleared not being subject to cultivation by the plow, but by spading only. The actual cultivation amounted to little, if any, more than mere curtilage. Residence was apparently not maintained after submission of proof.

The President's proclamation (34 Stat., 3301), contains the following proviso:

Excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States land office, or upon which any valid settlement has been made pursuant to law and the statutory period within which to make entry of filing of record has not expired . . . *Provided*, That these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the filing or settlement was made.

As above stated, it is alleged that the several entrymen were not at and prior to the creation of the national forest complying with the provisions of the homestead law as to residence and cultivation. It has been suggested that the confirmatory provisions of section 7 of the act of March 3, 1891 (26 Stat., 1095), now interpose a bar to the institution of adverse proceedings upon the several claims.

As already stated, no receipt or certificate issued upon the proofs offered in seven of the cases. The act of March 3, 1891, *supra*, provides:

That after the lapse of two years from the date of the issuance of the receiver's receipt upon the final entry of any tract of land under the homestead . . . laws . . . and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent.

In the opinion of the Department there was in the seven cases mentioned nothing upon which the confirmatory provisions of the statute could operate. One of the conditions imposed in the law is that "receiver's receipt upon the final entry" shall have issued. That act and instrument fix the date when the two-year period begins to run. The mere offering of final proof by the entrymen was not sufficient in and of itself to bring the claims within the letter or spirit of the statute in question.

With respect to the claims of Garrett and McCloskey it appears that receiver's receipts were issued, respectively, on April 5 and November 2, 1910, and consequently that more than two years have elapsed since that date. However, it is alleged that said entrymen, as well as the others named, were not at date of the reservation for the national forest, March 2, 1907, and immediately prior and subsequent thereto, complying with the requirements of the homestead law as to residence and cultivation. The President's proclamation, hereinbefore cited, excepts from withdrawal only those valid settlements or claims then covered by valid selections, filings, or entries and upon which the entryman, settler, or claimant shall continue to comply with the law.

If these settlers were in default at the date of forestry withdrawal the reservation of the lands by the Government for a public use be-

came effective and operative, and the entrymen could not thereafter, in the face of the withdrawal, cure their default by subsequent residence and cultivation. This is not only true of the seven claimants first above mentioned, but is also true of Garrett and McCloskey. See departmental decisions of September 24, 1914, and April 20, 1915, in the case of Svan Hoglund (43 L. D., 538, 540). It is entirely competent, therefore, and essential in order that the Department may be enabled to determine whether or not the forestry withdrawal attached, that a hearing be ordered, at which the facts in the case may be disclosed.

Accordingly, and in view of the foregoing, the Department is of the opinion that hearings should be ordered in each of said cases to determine the issues involved, and the action of the Commissioner is accordingly reversed. The cases are remanded, with instructions that a hearing be had to determine, first, whether a valid and *bona fide* settlement was made by the entrymen upon the lands claimed by them prior to the creation of the Umpqua National Forest, March 2, 1907; second, whether residence was established upon the land prior to the creation of said national forest, was being maintained March 2, 1907, and was thereafter continued as required by law and by the terms of the President's proclamation; third, whether the entrymen were at time of the creation of the national forest complying or did thereafter comply with the requirements of the homestead law as to cultivation of the land claimed; and fourth, whether entrymen settled upon and entered the land in good faith for the purpose of establishing homes thereon and using the same for agricultural purposes.

The evidence submitted or taken at the hearings may properly include showing as to the character of the land and value of the timber upon the respective claims; character of the soil, its suitability for cultivation, and whether entrymen have sold or agreed to sell the land or the timber thereon, all of which facts and circumstances may be taken into consideration in ascertaining the good faith of the entrymen.

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### STATE OF CALIFORNIA ET AL.

*Decided May 22, 1915.*

#### POWER-SITE WITHDRAWAL—SCHOOL INDEMNITY SELECTION.

Indemnity school-land selections are not excepted from the force and effect of the act of June 25, 1910; and a power-site withdrawal under that act is effective upon lands embraced in an unapproved school indemnity selection, notwithstanding the withdrawal was made subsequent to the filing of the selection.

## SCHOOL INDEMNITY SELECTION—CONFLICTING WITHDRAWAL.

Where part of the land embraced in a school indemnity selection is within a power-site or other withdrawal the selection may be divided and approved as to the land not in conflict upon designation of proper base for such portion.

SWEENEY, *Assistant Secretary*:

The State of California, Richard W. Barnett, transferee, has appealed from the decision of the Commissioner of the General Land Office, rendered May 24, 1913, in the above-entitled case, holding for cancellation indemnity school-land selection list R. and R. No. 251, State No. 2253, filed February 4, 1893, for the S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 27, T. 5 N., R. 10 E., M. D. M., Sacramento land district, in lieu of the E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 16, T. 5 N., R. 19 W., S. B. M., on the ground that the SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , said Sec. 27, is included in power-site reserve No. 325, created by Executive order of December 12, 1912, under the act of June 25, 1910 (36 Stat., 847); and further holding that the proof is incomplete, in that the nonmineral affidavit and certificate of non-encumbrance have not been filed.

The Commissioner properly held that indemnity school-land selections are not excepted from the force and effect of the act of June 25, 1910, *supra*, and that power-site withdrawal No. 325, under said act, although made subsequent to the filing of the selection, became effective. Under the circumstances the Department is without authority to approve the selection as to the SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , said Sec. 27. (See administrative ruling of July 15, 1914, 43 L. D., 293.)

By departmental instructions of August 7, 1914, supplemented by instructions of March 17, 1915, the Commissioner was directed to suspend action on all cases of this character pending before his office until further departmental instructions in the premises, it being the intention of the Department to again recommend to Congress legislation analogous to H. R. 16673, which failed to be enacted by the last Congress, section 10 of which proposes to afford relief in this and similar cases.

The present case is hereby remanded for suspension as to the SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , said Sec. 27, in accordance with the departmental instructions above referred to.

February 19, 1914 (43 L. D., 118), the Department issued instructions to the Commissioner of the General Land Office regarding forest lieu selection (Vancouver, Washington, 04633) made under the act of June 4, 1897 (30 Stat., 36), wherein it was set forth that—

No reason of law or administration is known which would require that a lieu selection, valid in other respects, should wholly fail because a part of the land is embraced in a power site or other withdrawal, and the Department is of the opinion that the selector should be allowed to divide the selection and assign proper bases therefor.

The Department finds no objection to applying this rule to indemnity school-land selection lists which may be approved in part, and it is therefore held that the selection in question may be divided and readjudicated by the Commissioner as to the SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , said Sec. 27. It appears that the nonencumbrance certificate and nonmineral affidavit have been furnished, as required by the Commissioner's decision of May 24, 1913. Upon proper designation of the base that is to be used in making such division, and in the absence of other objection, the list may be approved as to the tract excluded from the power-site reserve.

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### ATTORNEYS AND AGENTS—RECOGNITION TO PRACTICE BEFORE DEPARTMENT.

#### CIRCULAR.

Circular of December 6, 1912, 41 L. D., 439, governing the recognition of attorneys to practice before the Department of the Interior, reapproved for reprinting by Assistant Secretary Sweeney, without material change therein, May 22, 1915.

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### STATE OF CALIFORNIA ET AL.

*Decided May 26, 1915.*

#### SCHOOL INDEMNITY SELECTIONS—WITHDRAWALS—ACT OF JULY 17, 1914.

In view of the act of July 17, 1914, providing for the agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas or asphaltic minerals, and the act of the legislature of the State of California of April 14, 1915, empowering the surveyor-general of the State to accept the benefits of said act, with a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, school indemnity selections by said State embracing lands subsequently so withdrawn, classified, or reported, may be approved, subject to the provisions of said act, notwithstanding such withdrawal, classification, or report.

#### SWEENEY, *Assistant Secretary*:

L. J. Abrams, transferee of the State of California, moves for a rehearing in the above entitled case, wherein decision was rendered March 17, 1915, affirming the decision of the Commissioner of the General Land Office of June 19, 1914, holding for rejection school indemnity selection, made June 24, 1905, for the SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 35, T. 16 S., R. 10 E., M. D. M., San Francisco land district, on the ground that the land involved was withdrawn by the Secretary February 2, 1910, and included in a petroleum reserve.

It was held in said decision that administrative ruling of July 15, 1914 (43 L. D., 293), was controlling, and that the Department was powerless to decide otherwise, but that nothing therein would bar the State of California from accepting the benefits of the act of July 17, 1914 (Public No. 128, 63rd Congress, 38 Stat., 509).

It now appears from a duly certified copy of same filed in the Department, that the Legislature of the State of California has passed an act, approved April 14, 1915, entitled "An act to authorize the Surveyor-General of the State of California, to consent to the provisions of the act of Congress approved July 17, 1914," as follows:

SECTION 1. The surveyor general of the State of California is hereby authorized and empowered to accept the benefits of the act of congress approved July 17, 1914, entitled: "An act to provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals," and on behalf of the State of California, or of any assignee of the State of California, to accept and receive lists and patents to lands selected by the State of California as agricultural lands, which were subsequently withdrawn, classified or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, and containing a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine and remove the same, as provided in said act of congress.

By reason of the passage of said act the ground upon which said school indemnity selection was rejected no longer appears, and as the Surveyor-General of the State of California is now authorized to waive claim to mineral deposits and accept surface patent under the provisions of said act of July 17, 1914, *supra*, the motion for rehearing is accordingly allowed.

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### INSTRUCTIONS.

*June 1, 1915.*

#### CROW INDIAN LANDS—COAL CLASSIFICATION.

Where lands within the former Crow Indian Reservation were sold under the act of April 27, 1904, as nonmineral, and subsequently, before final payment of the purchase price, were classified as coal, absolute patent therefor will issue to the purchaser, upon completion of the payments, notwithstanding such classification.

SWEENEY, *Assistant Secretary*:

I am in receipt of your [Commissioner of the General Land Office] letter of January 29, 1915, requesting instructions as to certain tracts within the former Crow Indian Reservation, which have been sold and later classified as coal.

The act of April 27, 1904 (33 Stat., 352), providing for the disposition of certain lands in the ceded Crow Indian Reservation in

Montana fixed a price for the lands at \$4 per acre, when entered under the homestead law. As to lands entered under the mineral land laws the act provided that the price should be that fixed by existing law but in no event less than that fixed for lands entered under the homestead laws. Section 5 of the act further provided:

That when, in the judgment of the President, no more of the land herein ceded can be disposed of at said price, he may by proclamation, to be repeated at his discretion, sell from time to time the remaining land subject to the provisions of the homestead law or otherwise as he may deem most advantageous, at such price or prices, in such manner, upon such conditions, with such restrictions, and upon such terms as he may deem best for all the interests concerned.

Under the above authority the President by proclamation of September 9, 1910 (36 Stat., 2742), directed that all of the unentered, nonmineral, unsurveyed lands be sold at public auction at a price not less than \$2 per acre. The purchaser of each tract was required to pay one-fifth of the price down, the remainder to be paid in four equal annual installments. The proclamation further provided as follows:

If any purchaser shall at any time fail to make any payment when it becomes due all rights *under his purchase*, and all moneys theretofore paid thereunder will be forfeited. All lands offered but not sold, at the sale herein directed, shall thereafter be subject to purchase at private sale in the areas, under the terms, conditions and limitations mentioned in this proclamation at \$2 per acre.

Prior to the sale under the authority of the above proclamation a plat of the ceded lands of the Crow Reservation was prepared upon which was marked as reserved certain lands not to be sold because they were coal in character. Some 57 tracts which were sold at the first sale were later, upon July 13, 1912, reported by the Geological Survey as containing coal. They were classified August 12, 1913, as coal land, the price being fixed at from \$10 to \$30 per acre. As to these 57 tracts final payment of the purchase price had not been made at the time of the classification but such payments have now been made and the question presented is whether final certificate should issue with a reservation of the coal deposit to the United States or without such reservation.

You express the opinion that the lands were sold at the time of their offering, the equitable title vesting at that time, subject to defeasance in case of failure to pay the deferred installment. At the time of the sale the existence of coal under these particular tracts was not known, in fact they had been in effect classified as noncoal.

The United States in offering these lands for sale had through the Geological Survey classified the areas into nonmineral and mineral. The lands involved were offered for sale as noncoal and were purchased upon that basis. It would seem, therefore, that as a matter of fair dealing the sale so made should be consummated in the regular

manner, that is with the regular final certificate and patent without reservation of the coal deposits be issued.

I am inclined to concur with the view expressed by you that an equitable title subject to defeasance vested at the date of the sale, and there being no known coal under the tracts at that time the purchaser is entitled to an absolute patent. The act also authorizes the President to dispose of the lands remaining unentered upon such terms and conditions as he sees fit. There is, therefore, ample authority granted by Congress to dispose of the land, even if coal, upon such terms as may be deemed advisable. Even assuming that under the law it might be within the power of the Department to require these purchasers to take a limited patent, under the circumstances of the sale in which the tracts were offered by the United States as non-mineral, I am of the opinion that absolute patents should be issued.

The above renders it unnecessary to express any opinion upon the questions discussed by you as to whether such sales fall within the provisions of the act of March 3, 1909 (35 Stat., 844), and also whether the final proviso of said act would require that a patent without reservation be issued.

You are accordingly instructed to have final certificates and patents without reservation of the coal deposits issued and pursue the same course in similar cases.

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### STATE OF OREGON.

*Decided June 4, 1915.*

#### SWAMP LANDS—KLAMATH INDIAN LANDS.

The grant of swamp and overflowed lands made to the State of Oregon by the act of March 12, 1860, extends to and embraces swamp and overflowed lands, lying outside the diminished Klamath Indian reservation, which at the date of the grant were in the possession and occupancy of said Indians but which by the treaty of October 14, 1864, were ceded to the United States.

*SWEENEY, Assistant Secretary:*

By decision of September 5, 1913, the Commissioner of the General Land Office rejected the swamp land selection, under the act of March 12, 1860 (12 Stat., 3), of the State of Oregon, for certain lands situated in what is known as the ceded Klamath Indian Lands, and described as the E.  $\frac{1}{2}$ , Sec. 13, NE.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , and E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 24, and NW.  $\frac{1}{4}$  and SE.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$ , Sec. 25, T. 25 S., R. 6 E., W. M. The action of the Commissioner was based upon the departmental decision of June 6, 1913 (unreported), in the case of the State of Oregon, wherein it was held that the grant to the State under the act of March 12, 1860, *supra*, did not extend to the ceded Klamath Indian Lands.

From the Commissioner's decision the State has prosecuted an appeal to the Department.

The act of March 12, 1860, *supra*, extended the provisions of the act of September 28, 1850, granting swamp lands to the State of Arkansas and other states, to the States of Minnesota and Oregon. Said act of March 12, 1860, contains this provision:

*Provided:* That the grant hereby made shall not include any lands which the government of the United States may have reserved, sold, or disposed of (in pursuance of any law heretofore enacted) prior to the confirmation of title to be made under the authority of the said act.

At the date of the passage of this act the lands involved were situated within what is generally termed Indian country, and were occupied by the Klamath and other tribes of Indians. On October 14, 1864, a treaty was entered into between the Indians and the United States, which treaty was proclaimed February 17, 1870 (16 Stat., 707), whereby the Indians ceded to the United States all their right, title and interest in these lands, specifically excepting, however, from the terms of said treaty a diminished reservation which was set aside as their home.

The question presented for consideration is whether or not the possession of these lands by the Indians at the date of the passage of the act of March 12, 1860, was such a disposition thereof as excepted them from the grant to the State. It has been so frequently held by the Department and the courts that the title which the Indians held to land within the Indian country is the right of occupancy, while the fee thereof remains in the sovereign, that it is unnecessary to cite decisions on that point. The fee title to these lands at the date of the passage of the act of March 12, 1860, was in the United States, subject only to the right of occupancy of the Indians. The inchoate right of the State to the lands, swamp in character, within this territory attached at the date of the passage of the act of March 12, 1860, and was subject only to the right of occupancy in the Indians.

The provision in the act of March 12, 1860, exempting from the force and effect thereof lands reserved, sold or disposed of by the United States, has no application to the case under consideration, as there was no reservation or disposal of these lands in 1860. The legal title to the land involved was in the United States, and Congress had power to dispose of such title, subject to the right of occupation in the Indians. The decision of the Department of June 6, 1913, in *Ex parte* State of Oregon, upon which the Commissioner's decision is based, followed the departmental decision in the case of State of Oregon (32 L. D., 664), wherein the question presented was as to the right of the State to select lands within the diminished reservation. The latter case, however, has no application to lands

situated without the diminished reservation, as are those involved in the present appeal. The unreported decision of June 6, 1913, will no longer be followed.

The decision appealed from is reversed, and the case remanded for further action in accordance with the views herein expressed.

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**LOUTHAIN ET AL. v. MUNZER ET AL.**

*Decided June 10, 1915.*

**APPLICATION FOR MINERAL PATENT—PROTEST—WITHDRAWAL AFTER HEARING.**

Where an applicant for mineral patent withdraws his application after hearing upon a protest against the same, involving the character of the land, any subsequent mineral application filed by him for the same land must be considered and adjudicated in the light of the testimony submitted at such hearing.

*JONES, First Assistant Secretary:*

October 11, 1910, F. G. Munzer *et al.*, filed mineral application 02710 at Visalia, California, for the Fullers No. 17 placer mining claim, being lots 4 and 5 and the S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 24, Fullers No. 18 placer mining claim, lots 2, 3, 6 and 7, Sec. 24, Fullers No. 19 placer claim, lots 10, 11, 12 and 13, Sec. 24, Fullers No. 20 placer claim, SW.  $\frac{1}{4}$ , Sec. 24, T. 30 S., R. 23 E., M. D. M. All of these claims were alleged to be valuable for their deposits of fuller's earth and were located January 2, 1909.

The above lands were classified as oil land June 22, 1909, and were withdrawn by departmental order of September 27, 1909, pending legislation, being in temporary withdrawal No. 5. By Executive order of July 2, 1910, they were included in petroleum reserve No. 2, and by Executive order of September 2, 1912, were reserved for the exclusive use of the United States Navy.

December 17, 1910, protests were filed against this application by Guy Louthain, J. A. Ross, and J. M. Dover, who claimed the land, under asserted placer locations, as oil lands, the locations having been made in January, 1910. The protests, as far as here material, in brief allege that the applicants had never discovered any valuable minerals within their locations, it also being further alleged that the deposit of fuller's earth claimed had no value within the meaning of the mining laws. A later protest also asserted that applicants had failed to perform the necessary improvement work.

After publication of notice and posting thereof, the applicants paid the purchase price of the land January 9, 1911, and hearing was thereafter held upon the protest, in which the chief of field division intervened on behalf of the United States. After a lengthy

trial, in which voluminous testimony was introduced, and while the case was pending before the register and receiver for decision, the applicants, upon August 15, 1912, filed a withdrawal of their application. The register and receiver transmitted this withdrawal to the Commissioner, taking the view that it ended all further proceedings.

March 6, 1913, the applicants filed new application for patent No. 04010, embracing the SW.  $\frac{1}{4}$ , Sec. 24, being the Fullers No. 20 placer claim, and No. 04011, for the Fullers Nos. 17, 18, and 19 claims. May 17, 1913, a notice of an adverse claim against No. 04010 was filed by W. S. Lierly *et al.*, who claimed the land under a location as oil land, and who assert they have made a discovery of oil. Protests were also filed September 11, 1913, against application 04011, by individuals claiming lots 4 and 5 and the S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , and lots 10, 11, 12 and 13, being tracts embraced in Fullers placer claims Nos. 17 and 19, making similar charges as contained in the original protest, and claiming the land by virtue of oil locations.

By decision of December 22, 1913, the Commissioner of the General Land Office declined to accept the withdrawal of the first application, No. 02710, holding that the charges in the protest had been sustained, and found that the locations were null and void. By decision of January 28, 1914, he afforded the applicants an opportunity to move for a new trial, just as if the original decision had been rendered by the register and receiver, and motion for review and a motion for a new trial having been filed, the Commissioner, by decision of May 23, 1914, readhered to his former view that he had jurisdiction to refuse to accept the withdrawal of the mineral application and to determine the validity of the locations involved; but withheld action upon the motion for a new trial until the applicants had had the opportunity to appeal to the Department. Such appeal has now been perfected.

It will be observed that the proceedings directed under the protest filed were with a view to the denial of the application for patent then pending. The locations, or claims as such, do not appear to have been made the subject-matter of the proceeding. A voluntary withdrawal of an application, if tendered and accepted, would necessarily result in its rejection, which was apparently the immediate and primary object sought to be accomplished by the hearing ordered.

However, the withdrawal was made after a lengthy trial to determine the question as to the character of the deposit claimed and whether the application was based upon a valid discovery. The applicants can not be permitted by a withdrawal of their application to make such proceedings ineffective.

There is no objection to the withdrawal of an application, with the condition, however, that any subsequent application for the same land shall be determined in the light of the testimony so submitted.

Application No. 02710, therefore, should be immediately rejected. The new applications Nos. 04010 and 04011 should be adjudicated under existing laws and regulations and in the light of the testimony already introduced. In that connection, the Commissioner will also pass upon the pending motion for a new trial.

The matter is accordingly remanded for further proceedings in harmony herewith.

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## RIGHT OF WAY—RESERVOIRS FOR WATERING LIVE STOCK.

CIRCULAR.

[No. 413.]

(Addenda to Right of Way Regulations of June 6, 1908, 36 L. D., 567.)

Paragraph A, section 30, is modified to read as follows:

(A) No reservation will be made for a reservoir of less than 250,000 gallons capacity, and for a reservoir of less than 500,000 gallons capacity not more than 40 acres can be reserved. For a reservoir of 500,000 gallons and less than 1,000,000 gallons capacity not more than 80 acres can be reserved. For a reservoir of 1,000,000 gallons and less than 1,500,000 gallons capacity not more than 120 acres can be reserved. For a reservoir of 1,500,000 gallons capacity or more 160 acres may be reserved. In the case where the water is furnished the livestock by artificial means, such as by windmill, pump, tanks, troughs, etc., the regulations requiring a minimum capacity of 250,000 gallons may be waived, upon the claimant's submitting a satisfactory showing that by such artificial means he will be able to furnish sufficient water and provide proper trough, etc., to properly accommodate all cattle likely to water at the place in question.

CLAY TALLMAN,  
*Commissioner.*

Approved, June 18, 1915:

Bo SWEENEY,  
*Assistant Secretary.*

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## STATE OF CALIFORNIA ET AL.

*Decided June 23, 1915.*

### SCHOOL INDEMNITY SELECTION—OIL LANDS—WITHDRAWAL.

No title is acquired under or by virtue of a school indemnity selection until the same has been approved by the Secretary of the Interior, and where the selected lands are classified as petroleum in character, withdrawn, and placed within a petroleum reserve the Secretary is without authority to approve the selection for unconditional patent.

## OIL LANDS—WITHDRAWAL—SURFACE PATENT—ACT OF JULY 17, 1914.

Section 3 of the act of July 17, 1914, providing that persons who in good faith locate, select, enter, or purchase, under the nonmineral land laws of the United States, any lands which are subsequently withdrawn, classified, or reported as valuable for deposits of oil or other minerals therein mentioned, may, upon application therefor and proof of compliance with the law under which the lands are claimed, receive patent therefor, with reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same, has no application to lands which at the date of that act were embraced within a naval petroleum reserve, to be held "for the exclusive use or benefit of the United States Navy."

JONES, *First Assistant Secretary*:

By decision of December 15, 1913, the Commissioner of the General Land Office held for cancellation California State indemnity selection for NE.  $\frac{1}{4}$ , Sec. 24, T. 30 S., R. 22 E., Visalia land district, for the reason that the land is included within a naval petroleum reserve. Appeal from that action brings the case before the Department for consideration.

The selection was filed February 17, 1908. The land was withdrawn September 14, 1908, for classification by the Geological Survey, and the same was classified as petroleum-bearing in character, which classification was approved June 9, 1909, by the Department.

September 27, 1909, the land was withdrawn in aid of proposed legislation, and it was also embraced within petroleum reserve No. 2, by Executive order of July 2, 1910, and placed within naval petroleum reserve No. 1, by order of the President September 2, 1912.

The selection has never been approved by the Secretary, and the Commissioner cited in support of his holding departmental decision in the case of State of California *et al.* (41 L. D., 592), wherein it was held (syllabus):

No title is acquired under or by virtue of a school indemnity selection until the same has been approved by the Secretary of the Interior; and where the lands embraced in a selection are classified as oil lands and withdrawn under the provisions of the act of June 25, 1910, the Secretary is without authority to approve the selection in the face of such withdrawal; but it should be rejected without prejudice to the right of the State to submit showing with a view to securing reclassification of the lands and to apply anew therefor in event of their restoration.

Inasmuch as the land appears to be valuable for its deposits of oil, the selection was not valid when made, and could not be approved, irrespective of the withdrawal, for unconditional patent, and the only alternative action to be considered is with reference to the bearing of the recent act of July 17, 1914 (38 Stat., 509), with relation to the case. Said act provides that lands withdrawn or classified as valuable for deposits of oil or other minerals therein mentioned, shall be subject to appropriation, location, selection, entry or purchase, if other-

wise available, under the nonmineral land laws of the United States, subject to reservation to the United States of the deposits on account of which the lands were withdrawn or classified, or reported as valuable, together with the right to prospect for, mine and remove the same.

Section 3 of the act provides as follows:

That any person who has, in good faith, located, selected, entered, or purchased, or any person who shall hereafter locate, select, enter, or purchase, under the nonmineral land laws of the United States, any lands which are subsequently withdrawn, classified, or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, may, upon application therefor, and making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which patent shall contain a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine, and remove the same.

Prior to the date of said act, the said selection was not valid because of the mineral character of the land. It is only valid, if at all, to the extent of the surface, with reservation of the mineral deposits to the United States. Prior, however, to the act providing for surface patent, the Government, in addition to withdrawing the land for classification and prospective legislation with reference to the disposal of the mineral deposits, appropriated the land and dedicated it to an important public use. The President's order included same within Naval Petroleum Reserve No. 1, to be "held for the exclusive use or benefit of the United States Navy until this order is revoked by the President or by act of Congress."

Were it to be held that the remedial act above mentioned applied in this case so as to require issuance of surface patent upon this selection, the Government of the United States would not retain the exclusive use of the land, for section 2 of the act provides compensation to the surface owner for damages caused in mining and removing the mineral deposits.

For the reasons above stated, it is believed that the remedial act mentioned has no application in this case, and that the action of the Commissioner was proper. Accordingly, the decision appealed from is affirmed.

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### FRED PEDERSON ET AL.

*Decided June 26, 1915.*

#### TIMBER AND STONE ACT—CHARACTER OF LAND.

The timber and stone act does not contemplate that lands which in their present condition are unfit for cultivation owing to the growth of trees thereon must be disposed of under said law even though the growth is of little or no value, but to authorize disposal of lands under that law it must appear that they are chiefly valuable for their timber and are unfit for cultivation.

## TIMBER AND STONE ACT—COMMERCIAL VALUE OF TIMBER.

Lands covered by a growth of trees which are of little or no commercial value when severed from the soil are not subject to disposal under the timber and stone act as "chiefly valuable for timber."

JONES, *First Assistant Secretary*:

The Department has considered motion for rehearing *in re* departmental decision of October 5, 1914, affirming the action of the Commissioner of the General Land Office, which sustained the local land officers in rejecting timber and stone applications, filed May 19, 1911, by Fred Pederson and Petter C. N. Pederson, respectively, for the S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , and SE.  $\frac{1}{4}$ , Sec. 2, T. 50 N., R. 25 W., Duluth, Minnesota.

The contentions of the motion are not materially different from those made on appeal. In neither the appeal from decision of the General Land Office nor in the motion for rehearing is the correctness of the statements of fact, as contained in said decision, seriously questioned. But exception is taken in the motion to the statement by the Department on appeal that the decision of the General Land Office, denying these applications, was "for the reason that the lands are held to be adaptable for agriculture, and the timber upon it to be of little value." It is urged that these words do not state the ground upon which the applications were denied by the General Land Office. That office, in its decision, used the following language:

In the case of *Narver v. Eastman* (34 L. D., 123) the Secretary declared that the value of the timber or stone in years to come when a market is provided, would justify the office in patenting the entry. (Syllabus) "'Lands chiefly valuable for stone' are subject to entry under the act of June 3, 1878, regardless of whether or not the stone can, under existing conditions, considering the cost of quarrying and transportation, be marketed at a profit." The principle announced in the case cited above has been extended, it is true, to the future value of the timber or stone upon the land, but if the rule is to be followed, the office cannot escape the conclusion that no just comparison can be made without including therein the *future value of the land for agricultural purposes*.

Considering the case upon this basis, it is clear that the timber and stone applications must be rejected as there can be very little question that the future value of the land when cleared and drained will greatly exceed the value of the timber which is gradually decreasing in value as it dies.

It is contended that it clearly follows, from this language, that the decision of the General Land Office was "based on the grounds of the relative future value of the land for agriculture and for timber," or, as differently expressed, the decision holds "that in determining whether an application to enter land under the timber and stone law should be allowed must depend upon the future value of the land for agriculture." This, it is claimed, is contrary to the provisions of the timber and stone law, to the regulations and instructions issued thereunder, and to the principles laid down by the Supreme Court in construing said law. If the above language stood

alone it might be susceptible of the construction thus placed upon it, but immediately following said language and as showing that the General Land Office decision was not based solely on the ground claimed, that office stated and found:

Quite apart from this consideration of the case, however, the office is of the opinion that the timber and stone applications should not be allowed. The land is located in a swampy and untimbered section of the country. No lands within a radius of miles have been entered under the timber and stone law, and no attempt was made to enter these lands thereunder until after the State had built a drainage ditch adjoining, which had begun to drain the same. Furthermore, it is shown by the testimony of witnesses for the defense that lands of a similar character without timber and unreclaimed have sold in the same section and could be bought in adjoining sections and townships for from \$5 to \$6 per acre.

Considering the value of the timber alone, to secure which the applicants would have to pay \$2.50 per acre, it is evident that if the land contains but an average of 2-1/2 cords of mining lagging per acre, as shown by the cruise of the special agent, and could be sold at a profit of from 55 to 80 cents per cord at Palisade, as appears from the costs given by the witness for the defense, the applicants in this case, after deducting the purchase price of \$2.50, would sustain a loss per acre of \$1.13 to 50 cents.

The motion for rehearing insists upon a strict application here of the rule or principle announced in the case of *United States v. Budd* (144 U. S., 154), although the character of the land involved in that case, both as to its timber and for agricultural purposes, differs very materially from the character, in that respect, of the land involved in this case. The Supreme Court in the *Budd* case adopted the findings of the trial court, which were as follows:

It contains excellent fir and cedar timber, besides hemlock and an undergrowth of various shrubs and brush; that the trees are large, tall and straight, and sound, and will yield from 50,000 to 150,000 feet of the best quality of lumber per acre, and this testimony and estimate are not controverted. The field-notes made by the government survey or at the time of surveying the land, more than twenty-five years ago, describe the land as being stony and second-rate, and the timber as fir, cedar and hemlock, and the most convincing testimony of all is a series of twelve photographs taken near the centres of each legal subdivision of the tract. These pictures exhibit, with unerring certainty and faithfulness, magnificent trees standing so near together as to force each other to grow straight and tall. They satisfy the court that this tract is valuable and desirable for the timber upon it, and also that no man would be willing to subjugate this piece of forest for the mere sake of cultivating it.

Prior to the hearing in this case, an appraisement of the land involved was made in accordance with the regulations under the timber and stone law, and the report of that appraisement shows that the land is "covered with a small growth of tamarack trees, the largest of which are five inches in diameter at the butt and about thirty feet high. About half the trees are dead, due presumably to a partially perfected State drainage project in the vicinity of the land. When drained this land will be easily cleared and will then be

valuable agricultural land." From testimony of witnesses for the Government introduced at the hearing, and which is not materially controverted, it appears that the land, while swampy in character, needs very little drainage, due, presumably, to the fact that in 1910, the State of Minnesota constructed a drainage ditch along the west side of section 2. There is a sparse growth of tamarack on the land, which averages from 2½ to 6 inches in diameter and which could not be profitably marketed. The cost of clearing and draining the land would average about \$25 per acre and the land would then be worth about \$30 per acre for agricultural purposes. The land covered by the applications is described as consisting "of a black muck top soil varying in depth from two to three feet and a clay subsoil and it is a very productive soil and well adapted to the usual farm crops. It is covered with a light growth of tamarack and small spruce. The timber has no commercial value and could only be used for firewood, possibly some of it for fence posts." Some of the witnesses testified that lands of the same character as those embraced in the applications would readily sell to settlers at from \$10 to \$15 per acre. As heretofore stated, the lands are located in a swampy and untimbered section of the country and no lands within a radius of miles have been entered under the timber and stone law. The record shows that there is a pending homestead application for one of the tracts involved herein.

The language of the timber and stone act is "valuable chiefly for timber, but unfit for cultivation." Immediately following the above quotation from the Budd case as to the character of the lands there involved, the Supreme Court stated:

If it be suggested that this dense forest might be cleared off and then the land become suitable for cultivation, the reply is, that the statute does not contemplate what may be, but what is. Lands are not excluded by the scope of the act because in the future, by large expenditures of money and labor, they may be rendered suitable for cultivation. It is enough that at the time of the purchase they are not, in their then condition, fit therefor. The statute does not refer to the probabilities of the future, but to the facts of the present.

But the Court further said, in explanation of the foregoing statement:

We do not mean that the mere existence of timber on land brings it within the scope of the act. The significant word in the statute is "chiefly". Trees growing on a tract may be so few in number or so small in size as to be easily cleared off, or not seriously to affect its present and general fitness for cultivation. . . . The chief value of the land must be its timber, and that timber must be so extensive and so dense as to render the tract as a whole, in its present state, substantially unfit for cultivation.

It was held in the case of *Duncan v. Archambault* (35 L. D., 498)—

Where the character of land sought to be acquired under the timber and stone act is put in issue, entry under that act may be allowed only where it

appears that the growth of timber thereon is so extensive and so dense as to render the tract as a whole, in its present state, substantially unfit for cultivation; and that the chief value thereof is for the timber thereon.

The lands in question are not covered by any extensive, dense, or sizable growth of trees. On the contrary, they are admittedly very small and the principal value claimed for them is for lagging used in mining. While the matter of marketing timber is not necessarily a material factor in determining the timber character of land, yet it may properly be considered in arriving at the value of the timber. The testimony, even that on behalf of the applicants, shows that after deducting the probable cost of marketing the trees on this land for lagging purposes, there would remain very little, if any, profits. Therefore, the only theory on which it could be claimed that this land is subject to entry under the timber and stone law is that in its present condition, owing to the growth of trees thereon, even though meager and of no commercial value, the land is unfit for cultivation although the soil is shown to be very productive and well adapted to the usual farm crops. This is not what was contemplated by the law, as clearly indicated in the Budd case, wherein the Court said "trees growing on a tract may be so few in number or so small in size as to be easily cleared off, or not seriously to affect its present and general fitness for cultivation." The chief value of land, as a present fact, may be for agricultural purposes notwithstanding it is covered by a growth of trees, which, though of some value in connection with agricultural pursuits, are, nevertheless, of such small value comparatively and commercially that they can not be marketed except at a loss or at very little profit. While land may not be put to present use for agricultural purposes—that is, actually cultivated—owing to its condition, yet it does not follow that its chief value is not for such purposes. In other words, the timber and stone law does not contemplate, because in its present condition the land is unfit for cultivation owing to a growth of trees thereon, it must be disposed of under said law even though the growth is of little or of no value. To authorize disposition of lands under said law, it must appear that they are chiefly valuable for their timber and are unfit for cultivation. The difficulty, so far as the present motion is concerned, appears to be in concluding from the Budd case and the departmental regulations that the chief value of land can not be for agricultural purposes where there is a growth of trees thereon which renders it unfit for cultivation and prevents its immediate utilization for such purposes, and that there can be no such value therein separate and apart from a future value arising from an expenditure of large sums of money in rendering the land suitable for cultivation.

The facts in this case are very similar to those in the unreported case of *Swartout v. Johnson*, from the same land district, in which

the Department rendered decision March 28, 1913, and wherein it was said:

Even if the expense of removing therefrom the water and brush should amount to \$25 an acre, as testified to, their chief value, presently and prospectively, is unquestionably for agriculture and not for timber, which is, as stated, not such in kind, amount or value as to bring these lands within the purview of the timber and stone law as construed by the Supreme Court.

It follows that lands covered by a growth of trees, which are of little or no commercial value when severed from the soil, as in this case, are not subject to disposal under the timber and stone act as "chiefly valuable for timber." Departmental decision of October 5, 1914, will therefore be adhered to, the motion for rehearing being hereby denied.

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### JOSEPHINE M. LOCHER.

*Decided June 26, 1915.*

#### THREE-YEAR HOMESTEAD—ACTUAL RESIDENCE—CONSTRUCTIVE RESIDENCE.

Proof submitted under the three-year homestead law must show actual residence upon the land entered for at least seven months each year for three years, and the land department is without power to extend the privilege of constructive residence for absences during the seven months' periods.

#### RESIDENCE—TEMPORARY ABSENCES.

The requirement that the entryman shall actually reside upon his claim for seven months each year does not preclude short absences for the purpose of going to market or other short absences such as are ordinarily necessary and incident to the conduct of a farm.

#### ACTUAL RESIDENCE—VISITS TO CLAIM.

An entryman who is upon his homestead one or two days each week for a period of seven months each year can not be held to actually reside thereon within the meaning of the three-year act, no matter what may be the cause of his absences.

#### RESIDENCE, CULTIVATION, AND IMPROVEMENT UNDER THE GENERAL LAW.

Prior to the act of June 6, 1912, the homestead law prescribed no exact amount of residence, cultivation, or improvements as a condition to making final proof, merely requiring the entryman to show, within two years after the expiration of five years from the date of his entry, that he has "resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit."

#### REJECTION OF THREE-YEAR PROOF—ENTRY HELD INTACT.

Where proof submitted under the three-year act is rejected for insufficient showing as to residence, the entry, if made prior to the date of that act, should be held intact, subject to the submission of further proof, after the expiration of five years from the date of the entry, under the laws, rules, and regulations in force at the time the entry was made.

*JONES, First Assistant Secretary:*

Josephine M. Locher has filed motion for rehearing in the above-entitled case, wherein departmental decision was rendered January

29, 1915 [not reported], affirming the decision of the Commissioner of the General Land Office of November 10, 1914.

It appears from the record that on December 31, 1910, entrywoman made homestead entry No. 05233, under the act of February 19, 1909 (35 Stat., 639), for the S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 27, S.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 26, N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 35, N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 34, T. 25 S., R. 30 E., containing 320 acres, Burns, Oregon, land district; that she established residence on the land June 8, 1911, and submitted final three-year proof thereon June 12, 1914, under the provisions of section 2291, Revised Statutes, as amended by the act of June 6, 1912 (37 Stat., 123).

Her proof was rejected upon the ground of insufficient residence, the Commissioner holding that "the act of June 6, 1912, contemplates and requires the maintenance by an entryman of *actual* residence upon the land entered for at least seven months each year for three years, and this statutory requirement precludes the land department from extending the privilege of constructive residence during such periods on account of absence due to election to office or for any other reason," citing the case of Edward Gardner (42 L. D., 615), and, as stated, said decision was affirmed by the Department.

The record discloses that the entrywoman during the time covered by the proof was employed as a teacher in the high school at Burns, distant about eighteen miles from the homestead; that because of this distance it was impossible for her to go to her work daily and return every night to the land, but that during the school years of 1911-1912, 1912-1913, 1913-1914, she would return every Friday evening or Saturday morning, remaining until Sunday evening or Monday morning, and that she maintained her home there to the exclusion of one elsewhere, keeping her furniture and personal belongings in the house she had erected on the land. It is shown that she spent all her vacation and holidays on the land, except an absence from June 15, 1911, to August 1, 1911, attending the University of Chicago, and three weeks in July, 1912, when she made a trip to Portland, Oregon, to have her eyes examined and treated. It is further shown that the land has been improved by the construction of a double box house and porch, 10 x 12 feet, ceiled and papered, and that same is amply furnished with all the necessary household furniture and cooking utensils, a barn 12 x 16 feet, granary 6 x 12 feet, well and wire fencing, the total valuation of the improvements being approximately \$1200. It is shown that 40 acres were cultivated in 1912 and 1913, 80 acres in 1914, and 100 acres prepared and seeded to grain in the fall of 1914 for the season of 1915. As further evidence of her good faith entrywoman states that she has made a garden each year, inclosing same with a rabbit proof fence, and has planted trees, vines, shrubbery, flowers and several varieties of berry bushes, being compelled at times to carry water from a long distance to keep her vines and bushes alive.

A protest was filed against said proof by one, H. M. Horton, but as it was not sworn to and not corroborated this protest was properly dismissed by the Commissioner.

The law in force at the date of said original entry, section 2291, Revised Statutes, commonly known as the five-year homestead law, prescribes no exact amount of residence, cultivation, or improvements as a condition to the making of final proof, simply requiring claimants at the expiration of five years from date of entry or within two years thereafter to prove by two credible witnesses:

That he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit.

As amended by the act of June 6, 1912, *supra*, however, different conditions and limitations are imposed upon homestead entrymen who seek to take advantage of its provisions. Under this law, generally known as the three-year homestead law, the maximum period of residence is therein reduced to three years from the date of entry, and upon the submission of final proof entrymen must show that they have "actually resided upon and cultivated the same for the term of three years," with the proviso, however, that:

Upon filing in the local land office notice of the beginning of such absence the entryman shall be entitled to a continuous leave of absence from the land for a period not exceeding five months in each year after establishing residence, and upon the termination of such absence the entryman shall file a notice of such termination in the local land office, but in case of commutation the fourteen months' actual residence, as now required by law, must be shown.

It will be noted that the statute permits a leave of absence from the land for not exceeding five months each year, but at the same time requires the maintenance by entryman of *actual* residence upon the land for at least seven months in each year for three years. This statutory requirement of actual residence upon the land entered for at least seven months in each year for three years precludes the Department from extending in such cases the privilege of constructive residence during absences in the seven months' periods, when actual residence is required by the statute, and one who is on the homestead one or two days each week for a period of seven months in each year can not be said to have actually resided thereupon, no matter what occasioned the absences. This does not mean that an entryman can not go to market or be away for short periods of a few days at a time upon necessary business, but it does not permit the maintenance of *actual* residence in town for five or six days of the week and a visit to the claim on Saturdays or Sundays during seven months of the year. The Department is, therefore, without discretion in this matter and must conform to the express requirements of the statute. In the case of entries made or proof submitted under the so-called three-year homestead law, seven months *actual* residence for

each year for three years must be shown, } or continuous actual residence for fourteen months in commutation of final proof, as the case may be.

In the case at bar Miss Locher had the benefit of the five months' leave of absence per year permitted by law, and during the remaining seven months she admits she did not maintain her actual residence upon the land entered. She agrees that she could not have done so and taught school eighteen miles away, returning to the land each night and going to her duties each morning—that this would have been impossible. While she has abundantly proven her good faith by her improvements and cultivation, of which the Department is fully convinced, yet, as stated, seven months *actual* residence each year for three years has not been shown and, therefore, the final proof submitted can not be accepted.

The entry will remain intact, subject to submission of further proof, which may in this case, the entry having been made prior to June 6, 1912, be submitted under the laws, rules, and regulations in force at the time of the original entry (generally known as the five-year homestead law), upon or after the expiration of five years from date of such entry. Or three-year proof may be submitted upon a showing that she has cultivated the land and resided thereupon for seven months in each year for three years.

Motion for rehearing accordingly denied.

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### ORIN D. POOL.

*Decided June 26, 1915.*

#### NEW MEXICO SCHOOL GRANT—NATIONAL FORESTS—SETTLEMENT.

Section 6 of the New Mexico enabling act of June 20, 1910, operates to reserve sections 2, 16, 32, and 36, within national forests, for the benefit of the State, where not otherwise appropriated at the date of the passage of that act, the vesting of title under that act being postponed until such lands shall be restored to the public domain; and upon restoration of any such sections the inchoate right of the State, which was imminent over the lands, immediately attaches and becomes effective and prevents the attachment of any right under a settlement initiated after the date of the act.

*JONES, First Assistant Secretary:*

Orin D. Pool has filed a motion for rehearing in the matter of his homestead entry made November 20, 1911, for NW  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , and S.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 2, T. 14 S., R. 21 W., N. M. P. M., Las Cruces land district, New Mexico.

September 2, 1914, the Commissioner of the General Land Office held the above entry for cancellation, because made for lands not subject to disposition under the public-land laws, by reason of the

claim of the State of New Mexico arising under its school-land grant contained in section 6 of the act of June 20, 1910 (36 Stat., 557).

February 25, 1915, upon appeal, the Department affirmed the Commissioner's decision and stated that upon the elimination of these lands from the national forest in 1911 title thereto, under the enabling act, *supra*, vested in the State, and that the land department was without power or authority to sustain the homestead entry.

The claimant now contends that as his settlement and homestead entry antedated the admission of the State under the President's proclamation of January 6, 1912 (37 Stat., 1723), title to the lands did not vest in the State or then Territory, and that as the lands were never withdrawn by the Secretary of the Interior or by the President, the entryman's claim should be respected. The State has filed no protest, and through its Commissioner of Public Lands, on September 1, 1914, indicated that no protest would be made.

In the brief filed in support of the motion counsel elaborates the contention that the grant to the State did not arise or attach until the State of New Mexico was actually created and there was a grantee in existence capable of taking, and further, it is urged that under section 6, *supra*, authority is found for the State to make indemnity selection on the basis of these tracts under the facts here disclosed.

From the record it appears that said section 2 and certain other lands theretofore included in the Gila National Forest were, by proclamation of May 9, 1910 (36 Stat., 2694), to be excluded from the forest, and that such exclusion was to take effect on March 1, 1911. That proclamation further provided as follows:

The lands excluded from the Gila National Forest, in accordance with this proclamation, which are not embraced in withdrawals for administrative sites for use in the management of the forest, or in any other withdrawal, reservation, or appropriation, shall be restored to the public domain, and become subject to settlement under the general provisions of the homestead laws on or subsequent to March first, nineteen hundred and eleven, after such notice by publication as the Secretary of the Interior may prescribe, but shall not become subject to entry, filing, selection, or other form of appropriation until the expiration of thirty days from the date so fixed by him, and no person will be permitted to gain or exercise any right whatever under any settlement or occupation begun prior to such date, and all such settlement and occupation are hereby forbidden.

On April 20, 1911, the Department approved the Commissioner's notice for the restoration of the eliminated lands. That notice provided that the tracts therein described, if not otherwise withdrawn or reserved, were to be restored to the public domain on July 3, 1911, and would become subject to settlement on and after that date, but not to filing, entry, or selection until after August 2, 1911. That notice concluded as follows:

Warning is hereby expressly given that under the President's proclamation no person will be permitted to gain or exercise any right whatever under any settle-

ment or occupancy begun after March first, nineteen hundred and eleven, and prior to July third, nineteen hundred and eleven, and all such settlement or occupation is hereby forbidden, and those settling in violation of the President's proclamation are liable to be ejected.

The entryman alleges and claims settlement and residence upon the tracts from March 1, 1911, and subsequent improvements thereon to the value of \$1,750. His application was executed September 13, 1911, was filed in the local land office, and entry thereon allowed November 20, 1911. From the above it will be seen that his settlement and occupancy asserted prior to July 3, 1911, were premature and unauthorized.

Section 6 of the enabling act reads in part as follows:

That in addition to sections sixteen and thirty-six, heretofore granted to the Territory of New Mexico, sections two and thirty-two in every township in said proposed State, not otherwise appropriated at the date of the passage of this act, are hereby granted to said State for the support of common schools. . . . *And provided further*, That the grants of sections two, sixteen, thirty-two, and thirty-six to said State, within national forests now existing or proclaimed, shall not vest the title to said sections in said State until the part of said national forests embracing any of said sections is restored to the public domain.

It is obvious that at the date of the passage of the above enabling act, these lands were not "appropriated" by this claimant. When the administrative procedure was completed, which effectively restored the tracts to the public domain, the inchoate claim of the future State, which was imminent over the lands intervened and intercepted any settlement or homestead claim initiated after the date of the act. The statute, in effect, at least, operated to reserve and withdraw said section 2 upon its restoration to the public domain for the benefit of the grant made to the proposed State. The rights of the State, under the circumstances, are paramount to the claim of this homesteader, and as such, must be respected.

The judgment heretofore rendered, holding this entry for cancellation, is correct. The motion for rehearing is denied.

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NICHOLAS VAN GASS.

*Instructions, June 26, 1915.*

PATENT—VENDEE OF COMPLETED HOMESTEAD.

There is no provision of law whereby the vendee of a completed homestead entry may be substituted in the patent to be issued thereon as the patentee, but patent in such case should issue in the name of the entryman.

JONES, *First Assistant Secretary*:

The above entitled case has been the subject of departmental consideration, and by decision of October 29, 1914, and supplemental instructions of December 5, 1914, you were directed to issue patent to the entryman.

The homestead entry was made December 16, 1909, by Nicholas Van Gass, for lots 5 and 7 and the NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 7, and lot 3, Sec. 8, T. 26 S., R. 3 E., N. M. M., Las Cruces, New Mexico, subject to the provisions of the Reclamation Act. The case has recently been submitted informally for departmental consideration, in connection with a similar case of Johan C. Viljoen. The question respecting the issuance of patent was taken up with the Reclamation Service, and that office reported the lands could not properly be relieved from the reclamation withdrawal; but that, upon proper proof, and execution of the form of water-right application submitted, patent could be issued for the land embraced in the entry, as a farm unit, and that the proportionate charge of the construction cost would be a lien against the land under the water-right application.

You are, therefore, directed to proceed in accordance with instructions heretofore given, providing the entryman executes the water-right application, in accordance with the form attached to the papers in the Viljoen case.

Notice has heretofore been taken of the assignment made by the entryman to Nelle D. Sperry of lot 5, Sec. 7, and lot 3, Sec. 8. Said assignment was made after submission of proof by the entryman of residence, cultivation and reclamation, and it was accepted by your office May 21, 1914. By instructions of December 5, 1914, you were advised that patent should issue to Van Gass for all of the land embraced in said entry, notwithstanding it now appears that subsequent to the submission of such proof he assigned a part of the land to one Sperry. At date of sale Van Gass was entitled to patent under section 1 of the act of August 9, 1912 (37 Stat., 265), and there is no provision of law whereby the vendee of a completed homestead entry may be substituted in the patent to be issued thereon as the patentee. The act of June 23, 1910 (36 Stat., 592), has reference to assignments of uncompleted entries, and the submission of proof of reclamation by the assignees.

No action need be taken with reference to the assignment. That is a transaction solely between the entryman and his assignee, and with which the Government has no concern.

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### **JAMES VANDERPORT.**

*Decided June 28, 1915.*

#### **ENLARGED HOMESTEAD—ACT OF MARCH 4, 1915—SETTLEMENT.**

The act of March 4, 1915, validating certain enlarged homestead entries by persons who had theretofore made homestead entries for less than 160 acres, is applicable only to *entries* made prior to January 1, 1914, and furnishes no authority for allowing entry upon a settlement initiated prior to that date.

JONES, *First Assistant Secretary*:

James Vanderport appealed from decision of February 4, 1915, rejecting his homestead application for N.  $\frac{1}{2}$ , Sec. 15, T. 36 N., R. 13 E., M. M., Havre, Montana, on the ground that he had exhausted his homestead right by the prior entry for which he received patent.

September 27, 1878, Vanderport made homestead entry for SE.  $\frac{1}{4}$ , Sec. 7, T. 5 N., R. 17 W., 6th P. M., Bloomington, Nebraska, on which patent duly issued to him. He alleges settlement in the spring of 1909 on the land now applied for, having been informed that he was entitled to an entry under the enlarged homestead act, his former entry, a technical quarter section, containing only 153 acres. He claims benefit of the enlarged homestead law as interpreted at the time of his settlement and of the act of March 4, 1915 (38 Stat., 1162).

In Saavi Storaasli (40 L. D., 193) entryman had made a former homestead entry in Minnesota for 157.33 acres. Under the enlarged homestead act he was allowed entry for 160 acres at Glasgow, Montana. He sought to amend that entry to describe other land because of the worthless character of the tract originally entered. The Department held that:

When claimant made the Minnesota entry for a technical quarter-section of land, and after five years' residence thereon obtained title thereto, he exhausted his homestead right. The fact that the land thus patented lacked a little more than two acres of making 160 acres, did not give him the status of a qualified homestead entryman or the right to enter under the enlarged homestead act an additional 320 acres of land.

In instructions of April 2, 1912 (40 L. D., 526), it was held that:

Section 6 of said act of March 2, 1889, qualified a person who has entered "a quantity of land less than 160 acres" and who is otherwise within its provisions, to enter under the homestead laws "so much additional land as added to the quantity previously so entered by him shall not exceed 160 acres." This does not restore such person to the full qualifications of a homestead entryman but confers a special and limited privilege—limited to the right to make an additional entry for lands of area to be measured by the difference in acreage between 160 acres, the full homestead right given by section 2289 of the Revised Statutes, and the number of acres actually entered thereunder. In other words, the right granted by the act of March 2, 1889, is the right to enter additional land in amount limited to meet the deficiency existing between that originally entered under the homestead laws and 160 acres. . . .

So the right of additional entry given by the act of March 2, 1889, is necessarily confined by its terms to an acreage wholly inconsistent with the theory that 320 acres may be entered under the enlarged homestead act. Nothing in the enlarged homestead act precludes the exercise of such right of additional entry within the area designated for entry under that act, but the grant of additional right is not thereby enlarged as to such cases. It is such right only as might be exercised elsewhere upon the public domain of the United States subject to homestead entry.

Considering then the case above cited, the instruction proceeded:

It was not intended by this to say, even inferentially, that the case would have been different if the deficiency in the original entry had been large enough under the act of March 2, 1889, as administered, to entitle him to an additional homestead entry for forty acres of land. That case was decided upon its own facts. The discussion was confined to such facts and nothing found therein justifies the rule which you say now obtains in your office with reference to this question.

The act of August 24, 1912 (37 Stat., 506), was passed to make valid entries allowed by the Commissioner of the General Land Office under the misapprehension as to the effect of the decision in Storaasli's case.

In Lottie M. Upham (42 L. D., 89) it was held that said curative act—

by its terms, validates enlarged homestead entries only in cases where the entryman "before making such enlarged homestead entry, had acquired title to a technical quarter section of land under the homestead law." In this case Upham's prior entry, on which she secured patent as stated, was not for a technical quarter section of land but was in part for lands in one quarter section and in part for lands in another quarter section, namely, for the NE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$  and lots 1, 2, and 3, Sec. 31, T. 154 N., R. 82 W.

Benefit of the act of August 24, 1912, was therefore denied to Lottie M. Upham.

In the present case Vanderport's former entry was for a technical quarter section and, had he ever obtained an entry, it would have been cured by that act, but as no entry was ever allowed to him there "was no mistake on the part of the land office to be condoned.

The act of March 4, 1915, *supra*, provides:

That all pending homestead entries made in good faith prior to January first, nineteen hundred and fourteen, under the provisions of the enlarged homestead laws, by persons who before making such enlarged homestead entry had acquired title to land under the homestead laws and therefore were not qualified to make an enlarged homestead entry, be, and the same are hereby, validated, if in all other respects regular, in all cases where the original homestead entry was for less than one hundred and sixty acres of land.

This act is not applicable to the present case because no entry had been allowed, nor was there any valid settlement under the homestead laws for which entry had been refused.

It was held in *Wunderlich v. Selvig* (40 L. D., 355) that a settler under the enlarged homestead act, on unsurveyed land, was entitled to have his settlement relate back to the date fixed by the Secretary of the Interior in making designations under the act and that a settlement on unsurveyed land may be enlarged by a settler to embrace designated lands up to the full quantity of 320 acres, if no right of any other settler was thereby prejudiced. This is no authority for

allowing an entry to a person not qualified under the enlarged homestead laws.

Vanderport's contentions, therefore, are not well founded and the decision of the Commissioner is affirmed.

### SANTA FE PACIFIC R. R. CO. ET AL.

*Decided June 29, 1915.*

#### CANCELLATION OF TRUST PATENT—ACT OF APRIL 23, 1904—RELINQUISHMENT.

The provision in the act of April 23, 1904, that upon the cancellation of trust patents on Indian allotments under that act by the Secretary of the Interior, "such lands shall not be open to settlement for sixty days after the cancellation," has no application where the patent is canceled upon voluntary relinquishment by the allottee, the lands in such case becoming subject to appropriation without awaiting the expiration of sixty days from the date of cancellation.

*JONES, First Assistant Secretary:*

A. J. Schmidt, attorney in fact for the Santa Fe Pacific Railroad Company, appealed from decision of May 13, 1913, holding for cancellation the railroad company's lieu selection 029407 for NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 22, T. 21 N., R. 7 E., M. M., Great Falls, Montana, land district, on the ground that it was prematurely filed and that the land at the time of its filing was not subject thereto.

October 18, 1912, the railroad company filed its selection. The land was formerly embraced in trust patent on an Indian allotment made to one Maggie Wetzal for her minor child, which was relinquished by her and the allotment was canceled September 9, 1912, and notation was made thereof on the records of the local office October 15, 1912.

The Commissioner held that the land was not subject to entry or selection until sixty days after notation of the cancellation had been made on records of the local office. This holding was based on the act of April 23, 1904 (33 Stat., 297). This act provided that the Secretary of the Interior was empowered to cancel trust patents in case (1) a double allotment had been erroneously made to the same person, or (2) had been made to an Indian by an assumed name, or (3) that error in description of the land was made in the patent. The act then provided:

and no proclamation shall be necessary to open to settlement the lands to which such an erroneous allotment patent has been canceled, provided such lands would otherwise be subject to entry: *And provided*, That such lands shall not be open to settlement for sixty days after such cancellation.

The appeal assigns error in the decision that cancellation in this case was not made under this statute but was the voluntary act of the allottee who relinquished.

The act of April 23, 1904, *supra*, provided for cancellation by the Secretary of the Interior of an Indian allotment on either of the three grounds stated. Such cancellation might be *in invitum*, the Indian not consenting. Sixty days were therefore provided as a period during which other appropriation of the land should not be made, that the Indian might seek relief from such an order of the Secretary. The words in the proviso that such lands shall not be opened to settlement related to the action of the Secretary upon the ground stated in the foregoing provision of the statute. It is the general rule in statutory construction that a proviso limits what preceded it in the statute and giving this proviso that effect it withheld from other appropriation only such lands as had been restored to the public domain by action of the Secretary for the reasons stated in the statute. It was not intended to have any effect upon lands voluntarily relinquished by the Indian over which the Secretary had exercised no such power as was conferred by the statute. It is therefore clear that the land had become subject to appropriation when the railroad company made its selection.

In this case is a protest by Enuxis Buckland, an Indian of the Piegan tribe, who applied, January 25, 1913, for an allotment of the land in behalf of her minor child, Roland Buckland. As her application was not filed until more than sixty days after cancellation of the previous allotment, her objection to the selection is purely technical. Had the railroad selection been withheld until fully sixty days after the relinquishment, it would not avail her for it would still precede her application for allotment. The decision, however, is not placed on the ground of the lateness of her application but that no period of sixty days withholding the land from other appropriation could arise under the act of April 23, 1904, *supra*.

The decision is reversed and, if no other objection appear, the railroad selection will be approved.

#### STATE OF WASHINGTON v. SCHWERDFELD.

*Decided June 30, 1915.*

##### PRACTICE—CONTEST—HEARING.

A contest against an entry by one claiming an interest in or seeking to acquire title to the land is entitled to a regular hearing at which he may submit testimony in support of the contest, and it is not sufficient that he is notified of the date for the submission of final proof upon the entry and given opportunity to appear and cross-examine the final-proof witnesses; and failure of the contestant to appear, after notice, at the taking of the final proof, in nowise affects his right to a hearing on the contest.

JONES, *First Assistant Secretary*:

The State of Washington appealed from the decision of January 28, 1913, by the Commissioner of the General Land Office, denying a

hearing upon its contest against the homestead entry of George W. Schwerdfeld, for the SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , and W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 16, T. 35 N., R. 41 E., W. M., Spokane, Washington, land district.

Said township was surveyed in the field beginning June 12, 1907. The plat was approved July 13, 1908, and officially filed in the local office April 14, 1909.

April 16, 1909, Schwerdfeld made homestead entry for said tracts, alleging settlement March 4, 1907, and improvements valued at \$1,000. March 26, 1912, the entryman gave notice that he would offer final proof on May 14, 1912. The State of Washington was specially notified thereof under instructions in 30 L. D., 607.

April 5, 1912, the State of Washington filed in the local land office a protest against said entry, and an application to contest the same, contending, first, that title to lands in sections 16 and 36, in every township in the State, passed to the State under its school grant, whether surveyed or unsurveyed, if of the character and status specified in the grant, and that, therefore, no valid settlement under the public land laws could be made subsequent to the date of said act on any lands in said sections; second, the State alleged that the entryman did not settle upon said lands prior to the date of the survey in the field; and, third, that he had not lived on the land more than one-half of the time since survey. The State asked to be allowed to contest the entry on the grounds stated.

The entryman appeared on the date advertised and submitted final proof. The State did not appear to cross-examine the final-proof witnesses or to offer any evidence against the entry. The local officers suspended the proof and forwarded the case to the General Land Office for consideration. The Commissioner in the decision appealed from held that the final proof was sufficient, denied the first contention of the State, as a matter of law, and further held that because of the failure of the State to appear on the date set for the final proof, after due notice thereof, it was precluded from disputing any of the facts established by the record, stating, however, that, if the State could submit satisfactory reason and explanation for failure to appear at final-proof hearing, the matter of the application for a hearing would be further considered in connection with such showing.

In connection with the appeal the State makes an explanation as to why it failed to appear at the taking of proof. It is stated in substance that the submitting of final proof by the entryman in no way affects the right of any party to institute a contest against such entryman for the purpose of showing his entry was not made in good faith; that according to the Rules of Practice the right to such contest is extended to any person filing a proper application

in accordance with such rules; that the State has never been required in the past to appear when the entryman was offering his final proof and cross-examine his witnesses, in order to contest the good faith of the entryman in filing his entry; that the State had no reason in this instance to believe that a different rule would be adopted, having never been served with notice to such effect; that the State is entitled to have the entire case tried out and heard and disposed of under its application to contest at the hearing before the local officers and upon the charges and allegations of its application; that a great many matters are gone into at the time of the offer of final proof which are immaterial in many cases to the issues presented by contest; that in the present case the State should not be denied the right to contest upon the grounds that it had failed to appear, when it had not been served with notice to that effect, especially is this true in view of the fact that for several years past the State has been permitted to contest homestead entries, where it has been notified of the offer of final proof, and had made no appearance until a subsequent date.

Upon the first contention of the State, that it is entitled to the lands in sections 16 and 36, regardless of settlement thereon prior to survey in the field, the Department concurs in the view expressed by the Commissioner, denying the contention of the State. See *Washington v. Geisler* (41 L. D., 621), and *Fannie Lipscomb v. State of Montana*, April 14, 1915.

The other allegations of the State present matters proper for a hearing on the contest. A protestant against final proof is permitted to appear at the taking of such proof and cross-examine the final proof witnesses, and may also offer evidence in opposition thereto. A distinction should be observed, however, between a contest by a person claiming an interest in land or seeking to acquire title thereto, and a mere protest by a person claiming no interest in the land or seeking to enter the same, but appearing as a friend of the Government and in the public interest. In the latter case there is usually no occasion for setting a different date for the hearing of testimony. The protestant can not complain of the action taken on the protest, and it is entirely discretionary with the Government officials as to whether a hearing shall be had thereon specially or whether the matter may be disposed of in connection with the final proof. A contest contemplates a more extended hearing and involves the alleged right of an adverse party in connection with the land or an effort by him to acquire title thereto. Rule 1 of Practice reads as follows:

Contests may be initiated by any person *seeking to acquire title to*, or claiming an interest in, the land involved, against a party to any entry, filing, or

other claim under laws of Congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the Land Department.

Any protest or application to contest filed by any other person shall be forthwith referred to the Chief of Field Division, who will promptly investigate the same and recommend appropriate action.

Rule 5 of Practice provides that the register and receiver shall act promptly upon all applications to contest, and upon the allowance of same shall issue notice to the person adversely interested, and such person is required to make answer to the allegations of contest within thirty days after service of notice. His failure to so answer will be taken as confession of the allegations of contest.

In this case the local officers did not act upon the application of the State to contest, but transmitted the same to the Commissioner. The allegations showing proper ground for contest, the entryman should have been called upon to make answer, and upon answer a date should have been set for the taking of testimony. If the date advertised for the offering of proof should not then appear as of proper time, or the place not appropriate for the hearing on contest, then a different time and place should be set for the hearing on contest.

The above observations are to indicate the rule which should obtain in such cases. The present case has advanced beyond the point where the rule should have been properly applied. Other facts are now proper for consideration. The first contention of the State is ruled upon adversely to the State. Furthermore, the case has been investigated in the field by a special agent, and a favorable report has been submitted with reference to settlement and improvements. Much time has elapsed since the proof was submitted. The agent reports value of the improvements to be \$1200. In view of these facts it may be that the State will not now desire to pursue its contest, and it is the duty of the Department to protect entrymen from unnecessary hardship in defending their claims against attack unless there be apparent reason therefor.

In view of all the circumstances in this case it is believed that the general rule should not be applied, but that the State, if it still desires to pursue its contest, should so indicate anew, and should cause its allegations to be corroborated by at least two witnesses having knowledge of the facts regarding the alleged failure of the entryman to make settlement prior to survey in the field, or that he has failed to comply with the homestead law under his entry. The State is allowed thirty days for the action indicated.

The decision appealed from is modified accordingly.

**BLOOM v. HOLMES.***Decided June 30, 1915.***HOMESTEAD ENTRY—MARRIED WOMAN—RESIDENCE.**

Where a woman, having an unperfected homestead entry, marries a man having a similar entry, and thereupon abandons her claim and resides with her husband upon his claim until he offers proof and receives final certificate, and they then establish residence upon her claim, prior to the initiation of a contest against the same, she thereby cures her default in the matter of residence and is entitled to perfect her entry.

**JONES, *First Assistant Secretary:***

Silas M. Bloom has appealed from the decision of February 17, 1915, in the above-entitled case dismissing his contest filed March 4, 1914, against homestead entry No. 016873, made January 22, 1912, by Freeda A. Holmes, now Freeda A. Cool, for the SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 27, E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  and SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 34, T. 9 N., R. 50 W., 6th P. M., Sterling, Colorado. The action appealed from affirmed that of the register and receiver. The contest affidavit made the following allegations:

Contestant says that the contestee, Freeda A. Holmes, now Freeda A. Cool, after making H. E. No. 016873 on Jan. 22, 1912, on the 27th day of April, 1912, was duly and regularly married to one Nelson Cool and ever since said time she and the said Nelson Cool have lived and resided together as husband and wife up to and including the present time. At the date of said marriage, the said Nelson Cool was then holding under the homestead laws of the United States the Southwest Quarter of Section 34, Township 9 North, Range 50 West of the 6th P. M., which entry was Serial No. 014619, and which entry was made by the said Nelson Cool on November 17th, 1910. Affiant says that after the said marriage, which took place on April 27th, 1912, the contestee, Freeda A. Holmes, whose present name is Freeda A. Cool, lived and resided with the said Nelson Cool on the land embraced in his homestead entry up to and including October 17th, 1912, at which time the said Nelson Cool made commutation proof on his homestead entry No. 014619, and thereafter and in due time received his final certificate for the said land; that at the time of making the said final commutation proof by the said Nelson Cool, his wife, Freeda A. Cool, the contestee herein, was then holding the entry here in question, and that the said Nelson Cool and the said Freeda A. Cool, his wife, were then each holding a homestead entry under the laws of the United States. Contestant further alleges that the said Freeda A. Cool is still holding said entry and endeavoring to secure title to the said land, contrary to the statute in such cases made and provided.

After notice and answer thereto, hearing was had, with results above noted.

The facts in the case, practically undisputed, are substantially as follows: The entry, as stated, was made January 22, 1912. April 27, 1912, about three months after the entry, claimant was married to Nelson C. Cool, who then had an existing homestead entry for lands lying contiguous to the lands in question and upon which Cool

made commutation proof October 7, 1912, cash certificate issuing January 30, next thereafter. On October 24, 1912, about nine months after claimant's entry, she and her husband moved on to the land in question, established their residence there, and thereafter remained upon the land. Claimant built a house upon the land 16 x 16, lathed and plastered; dug a cistern; built a barn and chicken coop; fenced all the land and cultivated some 20 acres thereof. The contest proceedings were not initiated until over 16 months had elapsed after claimant herein had established residence upon the land.

It is contended that having married a man who had an unperfected homestead entry, it was the duty of the husband and wife to elect which of the two homesteads they would thereafter reside upon; that they could not obtain both, and that this is precisely what the husband and wife were undertaking to do.

The case cited by the Commissioner to sustain the decision, *Anderson v. Hillerud* (33 L. D., 335), seems to be in point; for there, as in this case, claimant had an unperfected homestead entry and married a man having a similar entry. She abandoned her claim to reside with her husband upon his claim until he offered proof, when they then established residence upon the wife's claim before the initiation of a contest, thereby curing her default. In the appeal contestant contends that the Commissioner lightly passed over the case of *Hattie E. Walker* (15 L. D., 377), not even referring to it after the same had been cited; that his briefs had been neglected and that the Commissioner was not conversant with the fact that such a rule had been laid down as the one cited in 15 L. D.; that that case is on all fours with the case at bar and supported by numerous decisions, citing them.

The case of *Hattie E. Walker*, *supra*, holds that a homestead entry of a married woman is not impaired by her subsequent marriage, provided she complies with the law after such marriage; but where the husband also has a homestead, the parties must elect which entry shall be perfected; that they can not maintain separate residences at the same time and secure title to both tracts. In the *Walker* case, however, the husband and wife attempted to maintain residences for nearly a year in two houses about four miles apart. Such is not the case here. On the contrary, claimant never pretended to establish residence upon the land until after her husband had made final proof. Had a contest been filed, alleging abandonment for over six months, and prior to the time she and her husband moved on the land, such contest would have prevailed, for the abandonment for that time was clear; but it was not until after she had established residence on the land and had remained there more than 16 months that a contest was filed, when it was properly held that she had cured her laches.

The case of *Lincoln v. Gisselberg* (17 L. D., 215), simply holds that a single woman, who makes a homestead entry and subsequently marries, and thereafter lives with her husband (who had filed for an adjacent tract), in a house built across the dividing line between the two claims, by such residence abandons her own entry. The case of *Jane Mann* (18 L. D., 116), also cited by appellant, holds that a husband and wife, while living together as such, could have but one residence, and the home of the wife is presumptively that of her husband. In this case, Mrs. Mann contended that she never resided with her husband upon his entry; in fact, refused to do so; but the Department held that they were legally man and wife and were seeking to obtain title to two homestead entries at the same time and that her residence was presumptively the same as that of her husband, thus abandoning her own entry.

In the case of *Martha E. White* (23 L. D., 52), it appears that Mrs. White, after her marriage, abandoned the residence she had on her own entry to live with her husband; that she returned to the land upon the death of her husband some three months after she went there, and complied with the law with respect to residence and improvements—she having ample time to comply with the law, and there being no adverse claim. The Department held that she might do this.

The case of *Patrick Flynn* (39 L. D., 593), cited by appellant, holds that where, at the time of marriage, a wife only has an unperfected homestead entry, and thereafter continuously resides thereon and otherwise complies with the law, she is entitled to perfect her entry notwithstanding her husband in the meantime is maintaining a separate residence upon his own patented homestead entry, to which he had perfected title prior to their marriage. In such case, both were not undertaking to obtain title to land at the same time, where residence was required by both parties.

The case cited by the Commissioner (*Anderson v. Hillerud, supra*), appears to be decisive of this case, and that case, being similar as to facts, to the one now under consideration, differs from all the cases cited by appellant.

The action appealed from is accordingly affirmed.

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JOHN ROBISON.

*Decided June 30, 1915.*

#### DESERT LAND ENTRY—IRRIGATION SYSTEM.

The damming of a dry draw and the retention of the water in a coulee or low tract of land has been found by the land department to be a very unsatisfactory and unreliable system of irrigation for the reclamation of lands, and as a rule such an irrigation and water-supply system is not sufficient to meet the requirements of the desert-land law.

JONES, *First Assistant Secretary*:

August 13, 1908, John Robison made desert land entry 0350; Lemmon series, now 02732 Belle Fourche, for the W.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 17, NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 18, T. 17 N., R. 5 E., B. H. M., Belle Fourche, South Dakota, land district. Final proof was submitted August 20, 1912, but certificate was withheld on protest.

February 15, 1913, proceedings were directed against said entry, on the following charges:

1. That the irrigable portion of the land entered has not been reclaimed by irrigation and is not provided with the necessary ditches, laterals and available water.

2. The claimant has not procured a permanent water supply and irrigation system sufficient to irrigate all of the irrigable portion of the land entered.

Upon due proceeding therefor, the testimony was taken by a designated officer in July, 1914, the Government being represented by a special agent, and the claimant by counsel, with witnesses. Some testimony on behalf of the Government was also taken before a notary public, in regular form, and properly submitted.

August 21, 1913, the local officers joined in decision recommending the cancellation of the entry, holding that the claimant's irrigation works are altogether insufficient, and that he has failed to reclaim the irrigable area included within the entry.

March 25, 1915, the Commissioner of the General Land Office, considering the case upon the same testimony, sustained the action of the local officers; and from this decision claimant has appealed to the Department.

Upon consideration of the entire record, the Department is of the opinion that the water-supply and irrigation system of claimant are not such as to meet the requirements of the desert land laws.

The attempted irrigation system consists of a dam across a dry draw, and the retention of the water in a coulee, or low tract of land. This system or proposition of irrigation has been found very unsatisfactory by the Department, and the attempt of individual entrymen to obtain land under the desert land laws by such a system of irrigation has been found unsatisfactory and insufficient, except in a few very exceptional cases; and this state of affairs has made necessary the remedial legislation cited in the following paragraph, and under which this case is remanded.

In view of the provisions of section 5 of the act of Congress approved March 4, 1915 (38 Stat., 1161-2), regarding desert land entries, the case is remanded to the General Land Office for further consideration and proper action under the provisions of said act, and the departmental regulations thereunder of April 15, 1915.

**BRYANT v. HAMMER.**

*Decided June 30, 1915.*

**THREE-YEAR HOMESTEAD ENTRY—CULTIVATION.**

The provision in the act of June 6, 1912, requiring homestead entrymen to cultivate not less than one sixteenth of the area of their entries beginning with the second year of the entry, contemplates that the two-year period mentioned shall date from the time the entry is made and not from the time residence is established.

**JONES, *First Assistant Secretary:***

February 4, 1915, the Department reversed the decision of January 10, 1914, by the Commissioner of the General Land Office, holding for cancellation the homestead entry of John Hammer, made April 15, 1910, for the E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , and SE.  $\frac{1}{4}$ , Sec. 25, T. 33 N., R. 2 E., and lot 3, Sec. 30, T. 33 N., R. 3 E., Havre, Montana, land district, on the contest of R. Glenn Bryant, upon the allegation of failure of the entryman to perform proper residence and cultivation.

The contest was filed October 25, and served on November 18, 1912. The evidence shows that the entryman commenced the erection of a house on the land in the fall of 1910, which was completed in the spring of 1911, when he established residence; that the value of the house was about \$800; that the entryman and wife were absent from the land from July to October, 1911; that in the fall of 1911 the entryman's wife was injured, and that on April 4, 1912, entryman and wife went to Canada for treatment and returned to the land November 14, 1912; that the entryman did not know of the contest at the time he returned to the land, but was served with notice a few days later; that in the year 1911 ten acres of the land were broken and ten more were broken in 1912, but that none of it was planted to crop, except a small garden where some potatoes and other vegetables were raised.

A motion for rehearing has been filed by the contestant, and it is urged that the Department erred in holding that under the terms of the act of June 6, 1912 (37 Stat., 123), the second year of the entry began in the spring of the year 1912, and not in the spring of the year 1911 and therefore the contest was premature.

Upon reconsideration of the matter, it is believed that this point is well taken, as the beginning of the two year period mentioned in the act dates from the time the entry was made, rather than the date when residence was established. However, it appears that 20 acres of the land were plowed within the two-year period, and that was sufficient to meet the requirements of law respecting cultivation. Instructions of November 1, 1913 (42 L. D., 511, 514, provide:

Tilling of the land or other appropriate treatment for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year

will be deemed cultivation within the terms of the act where that manner of cultivation is necessary or generally followed in the locality.

In this view of the case, the conclusion reached in the prior decision was correct and no reason is seen for disturbing the action complained of.

The motion is accordingly denied.

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**WILLIAM L. MARCY.**

*Decided June 30, 1915.*

**UNITED STATES MINERAL SURVEYORS—APPOINTMENT.**

The primary power of appointment of United States mineral surveyors, and the revocation of such appointments, rests with the surveyor-general subject to review by the Commissioner of the General Land Office; and where the surveyor-general makes such an appointment it should not be disapproved or rejected except upon charges or grounds therefor being stated, with opportunity to the applicant to answer and for a hearing if desired.

*JONES, First Assistant Secretary:*

William L. Marcy has appealed from the action of the Commissioner of the General Land Office declining to accept his bond and approve his appointment by the United States Surveyor-General for Arizona as a United States mineral surveyor for that district.

The surveyor-general on January 11, 1911, transmitted to the Commissioner Marcy's bond, and stated that the applicant had successfully passed the examination held in his office for determining the surveyor's fitness, and that the bond had been approved. The Chief of Field Division was advised of the surveyor-general's action. In March, 1911, a special agent investigated Marcy and recommended that his application for appointment as a United States mineral surveyor be denied. April 1, 1911, the Commissioner advised the surveyor-general in this matter as follows:

An adverse report having been received from the Field Service, this office declines to accept the bond and same is herewith inclosed for return to the applicant.

Notify Mr. Marcy of this action.

Marcy appealed and contends that inasmuch as he has applied, furnished the necessary recommendations as to character and ability, passed the examination, and filed the required bond, he can see no reason why he is not entitled to the appointment for which he has qualified.

Section 2334, Revised Statutes, provides:

The surveyor-general of the United States may appoint in each land-district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining-claims. . . . they (applicants) shall be at

liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys.

Section 2325, Revised Statutes, prescribes with respect to the survey that the plat and field notes shall be "made by or under the direction of the United States surveyor-general."

Section 2478, Revised Statutes, authorizes the Commissioner, under the direction of the Secretary, "to enforce and carry into execution, by appropriate regulations, every part of the provisions of this title not otherwise specially provided for."

In the Manual of Instructions for the Survey of the Mineral Lands, approved October 6, 1908, paragraph 1 is a recital of the appointive power of the surveyor-general contained in section 2334, *supra*.

(2) Capable persons desiring such appointments should therefore file their applications with the surveyor-general for the district wherein appointment is asked, who will furnish all information necessary. . . . (4) (Amended, 40 L. D., 215). The surveyors-general have authority to suspend or revoke the appointments of mineral surveyors at any time, for cause, and to suspend or revoke the appointments at such times as the bonds become subject to renewal under the act of March 2, 1895 (26 Stat., 806), for reasons appearing sufficient to sustain a refusal to appoint in the first instance. The surveyors, however, will be allowed the right of appeal from the action of the surveyor-general, who will at once transmit the same, with a full report, to the General Land Office (20 L. D., 283). (9) All bonds of mineral surveyors must be submitted to the Commissioner of the General Land Office for approval. (10) The appointment of a mineral surveyor is not for any fixed period, the continuation thereof depending upon the character of the service rendered. The surveyor-general will, therefore, not appoint mineral surveyors for a specified term. (14) . . . Unsatisfactory service, also, will be deemed sufficient cause for a revocation of an appointment, but the surveyor-general's action therein, subject to appeal, will require the approval of the Commissioner of the General Land Office. (53) . . . If found incompetent as a surveyor, careless in the discharge of your duties, or guilty of a violation of said regulations, your appointment will be promptly revoked.

From the foregoing it will be seen that the primary power of appointment and revocation of appointment rests with the surveyor-general, subject to review by the Commissioner of the General Land Office, and to the right of appeal. The mineral surveyor's work must be examined and passed upon by the surveyor-general, and, if found to be satisfactory and correct, approved by him. He is the official vitally and directly interested in the ability, efficiency, and competency of the mineral surveyors, who execute surveys under his express orders and direct instructions. The present applicant was satisfactory to the Surveyor-General of Arizona, who accepted his application and approved his bond after finding him competent to perform the duties of a surveyor. Without calling to the surveyor-

general's attention the adverse report, and without advising the applicant of the contents thereof or objections made therein, the Commissioner most briefly set aside the judgment and action of the surveyor-general, and returned the applicant's bond, declining to accept it, and thereby rejecting the appointment. This action, based as it was on a secret and confidential report, pursuant to which no charges were preferred or specific legal objections stated, and no opportunity afforded the applicant to show cause or make answer, does not favorably impress the Department.

In the case of Howard C. Hopkins (40 L. D., 318, 320), where the Commissioner upon an adverse report revoked a mineral surveyor's appointment, the Department said:

The said decisions and regulations, considered in the light of the departmental rules of practice, which require that the notice of appeal in any case shall specifically set forth all alleged errors, whether of law or fact, appearing in the decision complained of, clearly imply that a mineral surveyor shall be notified of the specific charges or causes, which would seem to render his further retention undesirable and be afforded a reasonable opportunity in the first instance to make such response thereto as may be appropriate. It would be inconsistent and illogical to accord a mineral surveyor the right of appeal from an order or decision of the surveyor-general or the Commissioner, the effect of which would be to revoke his appointment, and at the same time to hold that he could properly be denied all knowledge of the charges or grounds upon which such action was based and afforded no opportunity to respond to and disprove the charges, or challenge their sufficiency.

In the recent case of *Daniels v. Wagner* (237 U. S., 547) the Supreme Court of the United States condemned the proposition that a right conferred by law upon a citizen may be taken away by the exercise of a general, unlimited and undefined discretion assumed by the administrative officers of the land department, who are appointed for the purpose of giving effect to the law. That decision involved the legality of forest lieu selections, but the principle is not inapplicable here. Furthermore, it is repugnant to all ideas of fairness and justice to condemn without charges or grounds being stated, and without an opportunity afforded for answer and hearing if desired.

If the applicant Marcy is still desirous of being appointed as a United States mineral surveyor, he may, in writing, offer to file a proper bond, and may apply for appointment to the surveyor-general, who will thereupon report the matter to the Commissioner. If there be objections to or charges to be preferred against the applicant for such appointment, the Commissioner will formulate and state them, and advise the surveyor-general of the same; thereupon the surveyor-general will notify the applicant of such charges so that he may answer and controvert them, and, if the charges be denied, may apply for a hearing before the surveyor-general. The case will be governed

by the usual rules of procedure and disposed of in due course. In the absence of such offer and application, Marcy's appointment will stand rejected.

The judgment of the Commissioner herein is modified to accord with the views above expressed.

### TRIPP v. NELSON.

*Decided July 2, 1915.*

#### CONTESTANT—PREFERENCE RIGHT—PRACTICE.

Where an entry under contest is canceled upon default of the contestee in failing to file answer within the time fixed by the Rules of Practice, such cancellation being the result of the contest, the preference right accorded by the act of May 14, 1880, arises, and the contestant can not be denied such right on the ground that he failed to move for judgment by default as provided by Rule 14 of Practice as amended July 24, 1912.

#### RULE 14, OF PRACTICE VACATED.

Rule 14 of Practice as amended July 24, 1912, 41 L. D., 274, vacated, and Rule 14 as approved December 9, 1910, 39 L. D., 395, 398, will hereafter control.

#### JONES, *First Assistant Secretary*:

September 25, 1913, George E. Tripp filed a contest affidavit, charging abandonment against homestead entry No. 013191, made October 24, 1911, by Ole Nelson, for the SE.  $\frac{1}{4}$ , Sec. 34, T. 34 N., R. 12 E., M. M., Havre, Montana, land district. Notice was secured by publication, the last publication being August 28, 1914. Nelson failed to file any answer and the entry was ordered canceled by the Commissioner of the General Land Office January 30, 1915, without any preference right of entry to Tripp, for the reason that Tripp had not filed the motion for judgment by default required by rule 14 of the Rules of Practice, as adopted July 24, 1912 (41 L. D., 274), under the Department's decision in the case of *Armstrong v. Matthews* (40 L. D., 496). February 4, 1915, George M. Guenser was allowed to make homestead entry No. 028359, for this land, and upon March 1, 1913, Tripp filed an appeal to the Department.

Section 2 of the act of May 14, 1880 (21 Stat., 140), as amended by the act of July 26, 1892 (27 Stat., 270), provides:

In all cases where any person has contested, paid the land office fees, and procured the cancellation of any preemption, homestead, or timber culture entry, he shall be notified by the register of the land office of the district in which such land is situated of such cancellation, and shall be allowed thirty days from date of such notice to enter said lands.

In the case of *Edwards v. Bodkin* (42 L. D., 172), it was held that the preference right of entry conferred by the above act is a statutory right which the land department is without authority to deny or disregard by regulation or otherwise.

Rule 14, as adopted July 24, 1912 (41 L. D., 274), requires the contestant to file a motion for default judgment within a particular time; and, upon failure to file such motion, the entry may be canceled "without the award of preference right to contestant." It is clear that under the proceedings, the entry in contest is canceled as the result of such contest, and, this being true, the statutory right flowing from the act of May 14, 1880, *supra*, necessarily arises. The function of such a motion as required by rule 14 is merely to call the attention of the tribunal having jurisdiction of the controversy to the fact that one of the parties is in default. Such tribunal would have jurisdiction to enter a default judgment irrespective of whether a motion was filed or not.

I am, therefore, of the opinion that rule 14 as adopted July 24, 1912, and the case of *Armstrong v. Matthews*, in so far as it relates to the question here presented, are not in harmony with the statute. The instructions of July 24, 1912 (41 L. D., 274), are accordingly vacated and recalled, and rule 14 of the Rules of Practice as approved December 9, 1910 (39 L. D., 395, 398), will hereafter control.

The decision of the Commissioner is accordingly reversed and the appellant will be allowed the usual 30-day period within which to make entry. The allowance of the entry of Guenser was erroneous, and said entry should be canceled.

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### WARD v. TAPP.<sup>1</sup>

*Decided July 2, 1915.*

#### DESERT LAND ENTRY—EXTENSION OF TIME—SEC. 5, ACT OF MARCH 4, 1915.

The provision in section 5 of the act of March 4, 1915, providing for an extension of time within which desert land entrymen may submit final proof of reclamation, is held to apply to a case coming within its purview notwithstanding the pendency of a contest against the entry at the date of the passage of the remedial act.

JONES, *First Assistant Secretary*:

March 26, 1910, Margaret A. Tapp made desert land entry 04382 for the S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 32, SW.  $\frac{1}{4}$ , and S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 33, T. 25 S., R. 31 E., W. M., 320 acres, Burns, Oregon, land district.

Final proof was submitted August 27, 1912, but certificate withheld on protest by Field Service. June 25, 1914, adverse proceedings were directed against the entry. May 4, 1914, Earnest N. Ward filed contest against said entry to which answer was duly filed, hearing applied for and had on July 6, 1914, before the local officers, both parties appearing in person with counsel and witnesses.

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<sup>1</sup> See decision on motion for rehearing, p. 159.

In the contest affidavit it was charged, in substance, that \$3 per acre had not been expended in the irrigation, cultivation and reclamation of the land, and in permanent improvements thereon; that claimant had not procured adequate water supply; that her irrigation system was insufficient to irrigate and reclaim the land; that the land had not been provided with the necessary ditches, laterals and available water, and that no part of the land had been irrigated and reclaimed.

Before offering testimony at the hearing, contestant requested that the charge relating to expenditure of \$3 per acre on the land be dismissed. On August 10, 1914, the local officers, in consideration of the testimony adduced, found, in substance, that each charge made in the contest affidavit, including that of failure to expend \$3 per acre on the land, was sustained by the evidence, and recommended cancellation of the entry. February 18, 1915, the Commissioner of the General Land Office, considering the case upon appeal, found that the evidence did not warrant a holding that the required expenditures had not been made upon the land; that 50 acres of the land had been cultivated to crop, but that the amount of water applied on the fifty acres so cultivated was not sufficient to constitute irrigation and reclamation thereof, and upon such finding held the entry for cancellation, upon the single ground that contestee's facilities for irrigation of said land were insufficient to satisfy the requirements of the law. From this decision claimant has appealed to the Department. Upon examination of the record, the Department concurs in the conclusion of the Commissioner that the evidence does not warrant a finding that \$3 per acre had not been expended upon the land, and also with his finding that sufficient cultivation had been made.

It appears from the record that the water for irrigation is from a single well, dug and walled to a depth of 25 feet, and with a four-inch bore and pipe to a further depth of 102 feet. This well is situate upon the highest portion of the land; and it is shown by the testimony, without contradiction, that the supply of water is practically inexhaustible, being, in the language of the witnesses who knew most about it, "like pumping out of a lake." The claimant has small means, and her first pump used to draw water from this well was a second-hand pump, bought upon approval, which she used to put water upon the fifty acres in cultivation in the year 1912, and raised on said land in that year 510 bushels of the finest rye raised anywhere in that vicinity. Water was placed upon the land in the months of July and August, at the precise time when the crop needed water and would receive the greatest benefit therefrom. The testimony as to the amount of water actually placed upon the land is contradictory, and upon careful collation and analysis of such testimony no sufficient

reason is found to differ with the Commissioner's conclusion that the entry should be canceled under the laws and regulations in effect when such decision was rendered.

Additional legislation affecting the questions, however, has since been enacted and it is found that the case is brought fairly within the first of the last three paragraphs of the fifth section of an act of Congress approved on March 4, 1915 (38 Stat., 1138), and that claimant is entitled under such paragraph to an extension of three years from the date of allowance thereof within which to show that she has complied with the requirements of law in the matter of irrigation and reclamation of the land embraced in her entry.

The decision appealed from is accordingly modified and the contest of Ward will be dismissed and claimant notified of her right to make application within reasonable time for extension of time under departmental regulations of April 13, 1915 (44 L. D., 56).

The case is accordingly remanded to the General Land Office for further proceedings as herein directed and in accordance with the views herein expressed.

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**WARD v. TAPP (On Rehearing).**

*Decided August 18, 1915.*

*JONES, First Assistant Secretary:*

Earnest N. Ward has presented motion for rehearing of departmental decision of July 2, 1915 (44 L. D., 157), dismissing his contest against Margaret A. Tapp's desert-land entry for the S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 32; SW.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 33, T. 25 S., R. 31 E., Burns, Oregon, land district.

The motion sets up that the decision errs in giving to the act of Congress approved March 4, 1915 (38 Stat., 1138), retrospective and retroactive effect, and that it does not conform to the law or the facts, as presented in the record. The act of March 4, 1915, *supra*, provides, with respect to pending desert-land entries made prior to July 1, 1914, where entryman or his assignee has in good faith complied with the law as to yearly expenditures and proof thereof, that the claimants may, where they have been unable to effect reclamation of the land, and where a water supply is available, be given an extension of time, not exceeding three years, within which to reclaim the land and submit proof thereof; or where a water supply is not available, such entrymen may, under rules and regulations to be prescribed by the Secretary of the Interior, acquire the lands by complying with other provisions of said act.

The act of May 14, 1880 (21 Stat., 140), dealing with contests against such entries, accords a preference right to any person who "has contested, paid the land-office fees, and procured the cancella-

tion" of an entry. In this case the desert-land entry of Tapp was made prior to July 1, 1914, it was pending at date of passage of the act of March 4, 1915, and Tapp had submitted proof of the expenditure of \$3 an acre upon or for the benefit of the land. The contest of Ward alleged that entryman had not expended \$3 an acre upon the land; that she had not procured an adequate water supply; that her irrigation system was insufficient; and that no part of the land had been reclaimed. At the hearing, however, the contestant voluntarily withdrew the charge that an expenditure of \$3 per acre had not been made, and asked that said charge be dismissed. Evidence was submitted on the other points, and the register and receiver, in deciding the case, and notwithstanding the withdrawal of the charge described, made a finding that \$3 per acre had not been expended. The Commissioner of the General Land Office, on appeal, reversed the finding as to expenditures, and also found that a considerable portion of the land had been cultivated, but held that the water supply and contestant's facilities for placing it upon the land were insufficient. On appeal, the Department concurred in the Commissioner's finding that sufficient expenditure and cultivation had been made, and also found that the irrigation facilities were not sufficient. It, however, applied to the case the provisions of the remedial act of March 4, 1915.

It is clear from the provisions of the act last cited that it was a remedial statute designed to afford relief in just such cases as the one at bar, and that in this respect it was intended to have a retroactive effect. The condition imposed was that the entryman must have made the annual expenditures required by law and submitted proof thereof. These, the Department has found to have been done in the case at bar, and, as already recited, contestant dismissed this charge. The other charges made and the conditions found by the Commissioner's decision are those designed to be relieved from in the act in question, and to hold that the act did not have effect in such a case would be to render the law of little effect.

The contestant, by virtue of filing of his affidavit of contest, and the prosecution of same had not secured any right in or to the land. Had he secured the cancellation of the entry, he would have been entitled to enter the land in preference to others had the United States held the land open to further disposition. In this and like cases, however, Congress saw fit to relieve desert-land entrymen and extend to them additional time to reclaim the land, or, where that was not possible, another method of acquiring title thereto.

Clearly, therefore, under the circumstances and the applicable laws, the conclusion reached by the Department in its decision of July 2, 1915, was correct.

The motion for rehearing is therefore denied.

**MULLIN v. KEASTER.***Decided July 2, 1915.***DESERT LAND ENTRY—CREDIT FOR FENCING.**

The cost of fencing may properly be credited as an expenditure under the desert land law when the fence is appurtenant and subservient to the particular land covered by the desert land claim and was erected primarily for the purpose of protecting and preserving the means employed in the irrigation and reclamation of the land; and where a fence is constructed around a group of contiguous claims, only such portions thereof can be credited to any particular claim of the group as are shown to be permanent improvements upon and appurtenant and subservient to the land embraced in that claim.

**CONTEST—INTEREST OF GOVERNMENT—PRACTICE.**

The government is always a party in interest in contest proceedings, and in order to prevent lands being disposed of contrary to law may take advantage of evidence brought out at a hearing, although on a point not charged in the affidavit of contest.

**DESERT LAND ENTRY—WATER SUPPLY.**

The desert land law contemplates that an entryman thereunder shall show a permanent and feasible source of water supply and that sufficient water is or will be available to irrigate and reclaim the whole of the land entered or as much thereof as is susceptible of irrigation and to keep it permanently irrigated.

**CONTEST OF DESERT ENTRY FOR LACK OF WATER SUPPLY.**

A desert land entry is subject to contest at any time on the ground that there is no adequate, permanent, and feasible source of water supply for the irrigation of the land.

**JONES, *First Assistant Secretary*:**

A motion has been filed for rehearing *in re* departmental decision of March 21, 1914, which affirmed the action of the Commissioner of the General Land Office, dismissing the contest of Jerry Mullin against the desert-land entry of Richard R. Keaster, for the W.  $\frac{1}{2}$  W.  $\frac{1}{2}$ , Sec. 32, and the E.  $\frac{1}{2}$  E.  $\frac{1}{2}$ , Sec. 31, T. 22 N., R. 8 E., Great Falls, Montana.

The entry of Richard R. Keaster was made June 26, 1906, and in his declaration he stated, among other things, that there is through or upon the land "two coulees, no springs or beds of water," and that he expected to obtain his water supply to irrigate said land from "dam or reservoir by means of irrigating ditches." The witnesses to the declaration stated that water to irrigate the land can be obtained from "dam and reservoir by means of irrigating ditches a distance of 300 yards" from said land. With the declaration was a map showing method of irrigating the land and plan of ditches. Entryman submitted three annual proofs and with the last proof a

plan of irrigation different from that accompanying the original declaration. The alleged expenditures were as follows:

1st year, 1907:

640 rods of three-strand wire fence, at 50 cents per rod----- \$320. 00

2nd year, 1908:

4 days' work for 3 men and 3 teams on dam, at \$12.50 per day----- 50. 00

three-fourths of a mile of irrigating ditch----- 240. 00

one flume, 24 feet long----- 30. 00

3rd year, 1909:

40 acres of breaking at \$5 per acre----- 200. 00

five-eighths of a mile of irrigating ditch----- 200. 00

2 days' work on dam for 3 men and teams, at \$10 per day----- 20. 00

The contest affidavit of Jerry Mullin was filed March 29, 1910, in which it is alleged "that said Richard R. Keaster has not irrigated or reclaimed said land as required by law or at all; that he has not expended the sum of \$1 per acre per year for the irrigation, reclamation or improvement of said land during any year since making said filing or at all; that said land is not irrigated at all and has never been irrigated or improved by said entryman in any wise."

Upon testimony submitted at a hearing regularly had in July, 1910, after proper notice and service, the local land officers concluded as follows:

After a careful review of this testimony (covering almost 400 pages) we are of the opinion that the desert-land law has been complied with as to expenditures, construction of dam, ditches, and reservoirs for irrigation; but we fail to find in the testimony that the entryman has a permanent or feasible source of water supply for irrigating purposes, we therefore recommend that this entry be canceled.

The General Land Office in decision of June 18, 1913, on appeal, declined to consider the case "except on the question of expenditures made towards the reclamation of the land involved," holding that the testimony at the hearing should have been confined to the charges made in the contest affidavit, citing *McKann v. Hatten* (11 L. D., 75), and that a charge of nonreclamation is premature if brought within the statutory life of the entry, citing *Vradenburg's Heirs et al. v. Orr et al.* (25 L. D., 533). That office concurred in the part of the local officers' decision finding that "the desert-land law has been complied with as to expenditures, construction of dam, ditches and reservoirs for irrigation", but not in that part wherein they said "we fail to find in the testimony that entryman had a permanent or feasible source of water supply for irrigating purposes", the reason given by said office being "that the question as to whether entryman had a sufficient supply of water to irrigate the land was not in issue at date of the initiation of the contest." As to the facts, the General Land Office found:

The testimony shows that the land was fenced in 1907, at a cost of about \$320. In 1908, defendant constructed 420 rods of ditch, worth about \$1 per

rod, which has been kept in repair; also a dam 150 long, 28 feet wide at the bottom, 8 feet at the top, and about 10 or 11 feet high, which with the flume and end gate cost about \$270, and during the same year \$25 or \$30 were expended on extra work on the dam. In 1909, about 35 or 40 acres of land were broken at a cost of more than \$175, and in the same year about 200 rods more of ditch was done, also other work, amounting in all that year to about \$400. In 1910, about 40 acres were sown to flax which was irrigated.

The evidence in behalf of the defendant is based upon the testimony of witnesses who actually performed the labor.

March 21, 1914, the Department, on further appeal, affirmed the decision of the General Land Office both as to its findings of fact and conclusions of law, stating among other things—

The law does not require that annual expenditures of any year shall effect reclamation. It is sufficient if they are honestly made and intended to effect reclamation. The sole further requirement is that the tract shall be reclaimed within the time allowed. *Stevenson v. Scharry*, 34 L. D., 675, 678. The proofs show at first hand by the men who made the improvements and were paid for them, that sufficient annual expenditures were made in the honest purpose to effect reclamation of the land.

The testimony shows that entryman's desert-land claim, together with a like claim of his brother on the east and the homestead of his mother on the west, amounting in all to 800 acres, are enclosed by one fence which is alleged to have been built in 1907. Entryman's land lies about the center of this enclosure. It is estimated that there are  $4\frac{1}{2}$  miles of fence around the combined holdings, 2 miles of which entryman claims to own, although there is only one-half mile of fence on the north and one-half mile on the south of his land proper. The testimony of contestant's and entryman's witnesses differs as to the cost of the fence, the former estimating it at 50 cents a rod, while the latter say it is worth \$100 per mile. On the west of the 800-acre enclosure is a mile of fence built and owned by one Frank Glab as an improvement on his entry. Entryman testifies that under an agreement with Glab he was to have a half interest in this fence for keeping the whole of it in repair. Also there is a fourth of a mile of fence on the north and a fourth of a mile on the south of his mother's homestead, the cost of which entryman includes in his expenditures, explaining that he had to build this fence right through in order to keep the range cattle from getting in and destroying his improvements. This fence, like that of Glab's, formed part of and completed the  $4\frac{1}{2}$  miles inclosing the combined holdings of entryman, his brother, and his mother. There is nothing definite to show whether or not the mother contributed anything toward the cost of this fence, although ordinarily it would constitute an improvement on her claim. From the mother's testimony, it appears that she made the verbal agreement with Glab as to the fence on the west of the large enclosure and that its ownership was to be in both entryman and his

brother. She testified: "Of course it was understood by them that they were to own the fence." Notwithstanding the above, entryman, in his first yearly proof, claims sole ownership of both the half mile Glab fence and the half mile on the north and south of his mother's homestead.

The testimony further shows that in 1908, entryman built a dam across a coulee in about the center of his claim in order to hold the waters that might drain into the reservoir thus formed at times of rainfall and melting snows in the spring of the year, there being no natural springs or streams on said claim. He also ran out some irrigating ditches. The cost of this work is variously estimated by the different witnesses. In his second yearly proof, entryman charged the cost of the dam at \$50, with an additional cost of \$30 for a flume, and three-fourths of a mile of ditching at \$240, being at the rate of \$1 per rod. At the hearing, he testified that the dam cost \$275 including the flume, and that the total expenditure therefor in 1908 was \$320. Contestant's witnesses testified that the dam was from 40 to 50 feet long, 5 or 6 feet high, that there was no flume, and that it could be constructed at a cost of from \$49 to \$63; and that it looked like a place for watering stock; while entryman's witnesses testified that it was 150 feet long, 10 or 11 feet high, 8 feet wide at the top and 38 feet at the bottom, although one of these witnesses did say that the dam is 50 to 75 feet long. Another of his witnesses said it was worth approximately \$65 to \$75, and still another that it was worth \$180 including all the work and repairing since the dam was constructed. His brother testified that the dam cost \$175, and the flume \$25 to \$30 additional. While it is impossible to reconcile this testimony, the natural conclusion to be drawn therefrom is that if the dam was worth the amount claimed by entryman at the hearing, most of the work must have been performed after initiation of contest. Testimony on behalf of contestant shows that the Keasters got busy improving the claim, fixing up the dam and cleaning out the ditches in June, 1910, about the time contest notice was served; that prior to that time the dam was a very small affair. One of entryman's witnesses testified that the dam was rebuilt in the spring of 1910, more soil was put on top—it was rebuilt and fixed up.

The testimony is also conflicting as to the ditches, both as to their cost and character. Witnesses for contestant testify that some ditches had been run out from the reservoir. They were plow furrows which had not been scraped, not being wide enough in which to use a scraper. They did not look as if they had ever carried water and they would not carry water even though it were turned in as they had not been cleaned out. They could be plowed by two men and team at a cost of from \$14 to \$18. Witnesses rode over the land in an automobile and the ditches offered no serious obstruction nor caused any

particular inconvenience. On the other hand, entryman testified that the ditches were first plowed and then shoveled out, there being a lot of rocky places where it was necessary to use pick and shovel, a go-devil being used in place of a scraper. The ditches cost \$1 per rod (one of entryman's witnesses stated that they are worth 50 cents a rod), and before constructing same the land was surveyed so as to obtain the levels. Entryman's witnesses testified that the Keaster cattle trampled down the ditches, thus rendering it necessary to clean them out. Water was running through the ditches for a day in 1908 and again in the spring of 1910, the water running part of a day and all one night. As shown, entryman, in his second yearly proof, charged for three-fourths of a mile of ditch at a cost of \$240, which is at the rate of \$1 per rod.

In his third yearly proof, entryman alleged an expenditure of \$200 for breaking 40 acres, which is at the rate of \$5 per acre, \$200 for five-eighths of a mile of ditch, which is at the rate of \$1 per rod, and \$20 for work on the dam. At the hearing he stated that the total expenditure for the year 1909 was \$400. The broken ground was seeded to flax in the spring of 1910, in about May. The expenditure of \$20 for work on the dam was undoubtedly rendered necessary on account of injury by stock. Contestant's witnesses estimated the amount of breaking at 15 to 20 acres, and the cost thereof at \$4 per acre.

Only one other person, except entryman and his brother, who assisted in making the improvements, testified at the hearing, and this person was engaged for only a short time in erecting a small portion of the fence. Consequently the only testimony in the record of those who actually performed work on the claim is confined to that of entryman and his brother. There is no testimony directly showing what was actually paid out for the improvements, witnesses merely stating that so many days' or weeks' work, at stated prices, was worth so much, which is indefinite; and what the improvements may have actually cost is left in considerable doubt by reason of the fact that there is a very material variance in the statements of witnesses as to the number of days or weeks that were consumed in making the improvements.

Aside from the question as to whether or not the cost per rod for fencing, as charged in entryman's first yearly proof, was exorbitant, it is clear that the full cost of a half mile of Glab fence and a half mile on his mother's claim was not a legitimate charge in connection with his desert entry, as said fences are not located on nor attached to the land embraced therein. In the first place, these fences constituted just as much an improvement and afforded just as much protection to the claims of his brother and mother as to his own claim, yet the whole cost of said fences is credited on entryman's proof although, so far as shown, the mother and brother had equal interest

therein. Any obligation, under the alleged agreement, to keep one mile of the Glab fence in repair, so far as the land department is concerned, could not extend beyond the submission of final proof. That being true, the cost of repair from the standpoint of a required improvement on entryman's land could, in no sense, be commensurate with the original cost of the fence for which entryman gives himself credit. The fact that under the alleged agreement the fence was to be kept in repair, shows that it was to be maintained as an improvement on Glab's land as well, so that entryman after all did not have an absolute ownership therein such, for instance, as would give him the right to move it away. Then, too, neither the Glab fence nor that on the mother's claim constitutes an immediate and permanent improvement on entryman's land. While the cost of fencing may properly be credited as an expenditure under the desert-land law, in order to do this it must come within that provision of said law which requires expenditures, among other things, "in permanent improvements upon the land." The Glab fence is one-fourth of a mile west of entryman's land, and the mother's homestead lies immediately west thereof. Consequently, the fences in question are not attached to defendant's land. The cost of fencing is credited as an expenditure because recognized as a necessity in connection with desert-land entries; that is, for the purpose, primarily, of protecting and preserving the means employed in the irrigation and reclamation of desert lands. But to constitute a permanent improvement within contemplation of the law, to properly protect the irrigation system and the required cultivation, the fencing must necessarily be appurtenant and subservient to the particular land covered by the desert-land claim. This, for obvious reasons, involves a different proposition from that of reservoirs and ditches, which may be located off the land, and which are recognized as permanent improvements within the meaning of the desert-land law. Speaking of said law, it was said in the case of Nelson J. Littlejohn (35 L. D., 638):

Its general object was to require improvement of the land and secure its reclamation and cultivation. It permits credit for expenditures not made on the land itself, but does that by specific mention of main canals and branch ditches and water rights for irrigation of the particular lands—appurtenant to such land. These all savor of real property servient to the particular estate of the entry and dedicated to it.

Aside from the fencing, taking into consideration all the testimony as to the amount and especially the character of the improvements, consisting of the dam, ditches, and breaking, it is impossible to conclude that they were, in fact, worth the sums it is claimed were expended for them. The dam consisted merely of earth thrown up, not reinforced in any way, and was apparently not built with the care that ought to have been exercised considering the limited quantity of water that it was possible, under the most favorable circum-

stances, to conserve. The ditches consisted of plow furrows, the cost of which must have been comparatively small considering the manner in which they were constructed and their condition, and it is clear they were of little value for the proper reclamation of the irrigable portion of the claim as required by law. It was held in the case of *Bradley v. Vasold* (36 L. D., 106) :

In determining whether a desert-land entryman has complied with the requirements of the statute relative to annual expenditure, the reasonable value of the work done or improvements placed upon the land is the criterion, and not the amount alleged by the entryman to have been expended therefor.

A large part of the testimony introduced at the hearing was directed to the question of the source and sufficiency of the water supply to irrigate entryman's land, although no direct charge as to that feature was contained in the affidavit of contest. The source of his water supply, as alleged in his declaration, was a dry coulee across which he built an earth dam. The area of the land tributary to this dam from which water would drain into it is estimated to be about 140 to 160 acres, and it is also estimated that there are from 40 to 60 acres of the claim that cannot be irrigated from any source. According to the testimony on behalf of contestant, it is impossible to catch and store enough water in the reservoir to irrigate very much of the entry; that even if it were full of water, it would not properly irrigate more than 20 acres. The three forties south of the reservoir, on account of being higher ground, cannot be irrigated therefrom. Entryman's breaking and ditching lie north of the reservoir. If there were enough rain to fill the reservoir, there would be no need of irrigation. There is no water in the coulee when it is really needed for irrigating purposes. The only use to which the reservoir was put was in watering stock. After the spring rains and thaws, the water that has collected in the reservoir begins to dry up and there is no way of replenishing it except from casual rain storms. In fact, one witness testified that the reservoir was nearly full in March, 1910, but still there was not enough water to irrigate but a very small tract. This testimony is not seriously contradicted by entryman and his witnesses. In fact, they state that 30 or 40 acres would be the limit that could be irrigated from the reservoir, and that there was no water in it at date of hearing. They further state that if the year 1910 had been like that of 1909, the reservoir would have filled many times, but it is not absolutely shown that it was full of water in 1909, or, if it was, that any attempt was made to distribute it over the land. It is admitted that the southern portion of entryman's land cannot be irrigated from this reservoir, and one of his witnesses stated that in ordinary seasons of rainfall and snows the reservoir would fill twice. That is, it would at most irrigate 30 or 40 acres in a season.

At the southeast corner of entryman's claim, but only partially located thereon, is a pond or lake, the size and depth of which are variously estimated, which collects water from a drainage area equal to about a section of land. This body of water was apparently controlled by entryman's brother in connection with his desert entry, but was evidently regarded by entryman as one of the sources of his water supply. The brother says that he and entryman had an understanding as to the use of the water from the lake and there are plow furrows or ditches running out therefrom on entryman's land, although it is impossible for water to flow naturally in any direction except towards the lake. Witnesses on behalf of contestant say that the lake goes dry during the summer months and had done so for the past three years and, consequently, does not furnish a permanent supply of water. Entryman's witnesses say that it has never been entirely dry until the summer of 1910. A gasoline engine for pumping purposes was installed at the lake by entryman's brother a few weeks before the hearing, which he said was contracted for prior to this contest. This lake was used as a place for watering stock until the gasoline engine was installed. It is, undoubtedly, a wet weather lake; that is, there is water in it when the seasons are good but it practically dries up in poor seasons. The effect of entry and breaking the land forming the area draining into the lake, would be to virtually destroy its water supply. In any event, no portion of entryman's claim could be irrigated therefrom except by the use of a pump, a plan which was evidently not contemplated by entryman at the time he filed his declaration.

The Government is always a party in interest in such a proceeding as this, and that it may take advantage of evidence brought out at a hearing, although on a point not charged in the affidavit of contest, is well settled by numerous decisions. *Seitz v. Wallace* (6 L. D., 299); *Bridges v. Curran* (7 L. D., 395); *Saunders v. Baldwin* (9 L. D., 391); *Betts v. Shumaker* (21 L. D., 461); *Grand Canyon Ry. Co. v. Cameron* (36 L. D., 66); and *Knight v. United States Land Association* (142 U. S., 161).

The desert-land law provides that an applicant thereunder at the time of filing his declaration, must also file a map of the land which shall exhibit a plan showing the mode of contemplated irrigation, "which plan shall be sufficient to thoroughly irrigate and reclaim said land, and prepare it to raise ordinary agricultural crops, and shall also show the source of the water to be used for irrigation and reclamation." It goes without saying that a permanent and feasible source of water supply is absolutely essential under the desert-land law, which requires of an entryman thereunder a full showing as to the source of such supply. This necessarily means

that the source must be permanent and feasible, and that sufficient water is or will be available to irrigate and reclaim, as expressed in the circular of instructions, "the whole of the land entered, or as much of it as is susceptible of irrigation, and of keeping it permanently irrigated." The law also renders desert-land claims or entries subject to contest, "for illegal inception, abandonment, or failure to comply with the requirements of law." One of the requirements is the submission of yearly proofs which are for the information of the land department and to show whether or not the entryman is acting in good faith. To hold that a desert-land entry is not at any time subject to contest, on the ground that there is no adequate, permanent, and feasible source of water supply, or that the land department may not take advantage of information developed at a hearing bearing on the subject, even though not charged in the affidavit of contest, would be to admit that the land department must permit indefinitely, even though in possession of information on the subject, a fraudulent segregation of the public lands. The proposition presented here in nowise conflicts with the rule announced in the case of *Vradenburg's Heirs et al. v. Orr et al.* (25 L. D., 533), and allied cases, wherein it is held that a charge that land is not reclaimed is premature if made within the statutory life of the entry. Here the question is not as to whether the land has actually been reclaimed, but as to whether the entryman owns, controls, or has an interest in a source of water supply sufficient to irrigate his land and to keep the same permanently irrigated. There is a clear distinction between irrigation and reclamation. The one is the means in process during the statutory life of the entry by and through which ultimate reclamation of the land is accomplished. As was said in the case of *Alonzo B. Cole* (38 L. D., 420)—

Cultivation of desert lands without actual irrigation would be a useless proceeding, and inasmuch as the cultivation of the amount stated is required, it is also necessary that this area must have been actually irrigated by placing water upon it prior to final proof.

There is one matter concerning which all witnesses are substantially agreed, namely, that there was practically no attempt to irrigate any portion of the land or to plant crops thereon until May or June, 1910. Whether this particular work was done before or after entrymen had knowledge of the contest is not entirely clear, although the testimony leaves the impression that it was after. Entryman's brother, who appears to have assisted him in his work on the land, testified that irrigating was done "along in the middle of June, the forepart of June." Contest was initiated March 29, 1910, and notice thereof was personally served June 8, 1910. The year 1910 was a notoriously dry one, but the prior years were average ones and 1909

was an exceedingly wet year, yet no explanation is given as to why an attempt was not made to irrigate the land prior to 1910. The fair conclusion is that it is due to the fact either that a sufficient supply of water had not been conserved by entryman, or that his ditches were inadequate and not in proper condition, or both. The result is that although having this land segregated for four years, it remains in its original desert state, entryman having accomplished nothing whatever in the way of crops, grass, or vegetation of any kind, although abundantly able financially to fully comply with the requirements of law. Besides, entryman must have known at the time he filed his declaration that it was not possible to irrigate the southern portion of his claim, or more than one-third of his land, from the reservoir he proposed to construct.

The three members of the Keaster family having claims within the 800-acre enclosure control about 3,000 acres of land and are engaged in the cattle business, owning and grazing several hundred head. The principal use and, in fact, the only use to which these lands were put, up to the time of contest, was as a pasture for cattle while, according to the statements of the family, they were being gathered in from the range and held to await shipment, but which, according to statements of other witnesses, was being used as a general pasture. The fencing around this large pasture was as much for the purpose, apparently, of keeping the family cattle in as for keeping other cattle out. It is admitted that the cattle trampled on and filled up the ditches, and entryman himself stated that the dam was rebuilt "because the cattle had pushed the dirt down and trampled over it." Thus no proper protection was afforded the irrigation system even though it had been otherwise adequate in all respects. Obviously such protection is as essential as any of the other requirements of the desert-land law. It appears that entryman asked for an extension of time and, furthermore, the records of the General Land Office show, of which judicial notice will be taken, that the homestead entry of his mother was canceled upon contest and that the desert entry of his brother was canceled upon relinquishment.

Under the facts as disclosed, evidencing a lack of good faith, the Department finds, even though there were no contest, that the provisions of section 5 of the act of March 4, 1915 (38 Stat., 1138), are not applicable to this entry.

The Department is of opinion that, upon the whole record, this entry ought to be canceled. Its former decision of March 31, 1914, is accordingly hereby recalled and vacated, and that of the Commissioner of the General Land Office of June 18, 1913, reversed.

## ACCOUNTS—SURVEYORS-GENERAL'S OFFICES.

## CIRCULAR.

[No. 422.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, July 2, 1915.*

## UNITED STATES SURVEYORS-GENERAL.

SIRS: Beginning with August 1, 1915, surveyors-general shall issue a receipt, making a memorandum copy thereof by carbon process, for each and every amount received by them for transcripts of records, plats, etc., the original to be delivered to the depositor and the memorandum copy to be forwarded to this office with an abstract of moneys received at the end of the quarter; and all such moneys received shall be deposited by them in a separate account to their official credit, as "Trust Funds" ("Unearned Moneys"), as is now done by receivers of public moneys at United States land offices, in accordance with paragraphs 72, 83 and 95 of Circular 105.

Under the act approved March 3, 1913 (37 Stat., 733), surveyors-general may accept cash, currency, and certified checks when drawn in their favor, on national and State banks and trust companies located in the same city as the depository with which the deposits are to be made, and such "out of town" certified checks as can be cashed by them without cost to the Government. United States postal money orders may be received and accounted for as cash when they are made payable to the order of the surveyor-general by the post office where they are issued and drawn on the post office where the surveyor general is located. Surveyors-general must not accept, or issue receipts for, remittances tendered in any other form.

Under the regulations of the Treasury Department (Circular No. 47, dated April 5, 1905) surveyors-general living in the same city or town with an assistant treasurer of the United States or a national bank depository, must deposit their receipts at the close of each day. Surveyors-general at such a distance from a depository that daily deposits are impracticable, must forward their receipts by registered mail at the end of each week.

In view of the small amounts involved in most of the deposits for transcripts of records, plats, etc., it will not be necessary for the surveyor-general to draw his official check each time a deposit is earned (applied), but at the end of each quarter he shall draw his official check against his account of "Unearned Moneys" for the total amount applied during the quarter, "For deposit to the credit of the Treasurer of the United States," endorsing on such check the

number of each and every receipt on account of which the deposit is made.

Where the whole of the amount deposited by an applicant for transcripts of records, plats, etc., is not earned, the excess shall be returned to the depositor by official check drawn against the surveyor-general's account of "Unearned Moneys," on which check shall be noted the depositor's receipt number.

At the end of each quarter the surveyor-general shall submit an abstract of moneys received, which shall show the date of each receipt, the number of the receipt issued, the name of the depositor, the purpose for which the deposit was made, the amount thereof, and the date, number and amount of each certificate of deposit to official credit. The "Abstract of Collections" (form 2-106b) will serve this purpose, using the columns as indicated by their headings, except as to deposits to official credit, each of which shall be entered on the line immediately following the receipt or receipts it covers, the date in the date column, the certificate of deposit number in the receipt number column and the amount on the right-hand side of the column headed "For what purpose."

The surveyor-general shall also submit at the end of each quarter an abstract of moneys returned or applied (form 4-103d), which shall show the date of each transaction noted thereon, the name of the depositor and the number of the receipt issued to him in connection with each amount returned or applied, the number of the surveyor-general's official check where an excess has been returned or a deposit made to the credit of the Treasurer of the United States; the amount returned to each depositor; the amount applied in connection with each deposit; and the total amount returned and applied in connection with each receipt, which, of course, will in each case agree with the amount for which the receipt was issued.

Entries in "Account Current." In the column headed "Trust Funds—Unearned Moneys," under DEBITS, shall be entered the total receipts as shown by the "Abstract of Collections," and under CREDITS, on separate lines, the total amount applied and the total amount returned to depositors. The difference, if any, between the amount collected and the amount returned and applied shall be treated as a balance due the United States. In the column headed "Work done in Office of Surveyor-General," under DEBITS, shall be entered, on the line with "Collections, as shown by abstracts," the amount applied during the quarter, and under CREDITS the amount deposited to the credit of the Treasurer of the United States at the end of the quarter.

But one form of receipt blank will be used by surveyors-general, namely, form 4-129. These receipts are numbered and must be used in consecutive numerical order, each surveyor-general using first the

lowest numbered receipt furnished him: Any receipt blank that is mutilated or spoiled, in any manner, should be marked plainly across its face "Canceled" and be placed in proper numerical order with the copies of receipts transmitted with the abstract of moneys received. Surveyors-general must account for every receipt blank issued to them.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved July 9, 1915:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

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### MONTEZUMA GOLD & SILVER MINING CO.

*Decided July 8, 1915.*

#### CORRECTION OF DESCRIPTION IN MINERAL PATENT.

By virtue of sections 2327 and 2372, Revised Statutes, a mineral entry in error because of erroneous description may be cured even after patent upon surrender of the outstanding instrument and the relinquishment of title thereunder, and a corrected patent issued containing an accurate description of the ground actually staked and monumented under the original patent survey.

JONES, *First Assistant Secretary:*

The Montezuma Gold and Silver Mining Company, claiming as successor to the patentees of Nevada, Surprise, Gazelle, Discovery Location Lone Star and First North Extension Lone Star lode mining claims, mineral surveys 690, 691, 689, 694, 695, and patents numbers 12839, 12840, 12841, 12842, 12843, respectively, has appealed from the Commissioner's decision of October 15, 1914, denying relief upon a petition for amendatory or supplemental patents and rejecting pending mineral applications 022723, 022724, 022725, for said claims.

The land in question is situated in the W.  $\frac{1}{2}$ , Sec. 30, N.  $\frac{1}{2}$ , Sec. 31, T. 13 N., R. 1 W., G. & S. R. M., Phoenix, formerly Prescott, land district, Arizona. The claims above named were located in the 70's and were embraced in official mineral surveys as above enumerated made by one Pannenberg in 1884. Separate patent proceedings were instituted and carried to completion for the claims in 1885. February 2, 1888, the patents above referred to were issued to William N. Kelly *et al.* for these claims which were described therein in accordance with the application record, which was based upon the approved mineral surveys.

In 1901, Mineral Surveyor J. J. Fisher in making a survey of the adjacent Midnight Test, Saxon and Dixie lode claims, survey No. 1585, ascertained and reported that there were mistakes in the courses

and distances in the surveys of the above five claims, and particularly in the surveys of the Nevada and Surprise. In an affidavit verified by him he alleged that the ground described in the field notes, plats and patents was not the same land as that defined by the monuments on the ground. Another surveyor, William H. Merritt, at the request of William N. Kelly, who appears to have been the president of the company, made a survey and submitted sketch plats showing the variation in positions of the claims as actually monumented on the ground and as described in the 1884 surveys. In an affidavit verified September 22, 1914, but referring to his survey made in September, 1901, Surveyor Merritt states:

The black lines on the plat, hereto attached, accurately show the boundaries of said mining claims, and the red lines show the boundaries of said claims as represented in Deputy Mineral Surveyor Pannenberg's notes of his survey of said claims.

In this survey I found all the corners established by Surveyor Pannenberg, except the northeast corner No. 7, of the Gazelle lode, and the black lines show these corners. But in writing out his notes Mr. Pannenberg wrote them in the magnetic course, not the true course, which is the cause of the variation shown by the red lines on the accompanying plat.

The plats referred to are reproductions of the 1901 sketch plats above mentioned.

The company thereupon, in 1901, filed a petition asking that the original patents be recalled and that new patents be issued giving a proper description of the ground held and owned by it. The application was denied by the Commissioner and on appeal the Department held that the company might surrender its outstanding patents, reconvey the land and institute patent proceedings anew as the basis for the issuance of corrected patents. It was stated that failing in this the Commissioner's denial of the petition would stand affirmed. This decision was adhered to on review August 19, 1902, and it was there stated:

If the matters alleged in the petition be true considerable portions of the lands which the company asks to be included within the new patents in these several cases were not embraced in the original applications for patents or in the published or posted notices of said applications. To embrace these lands in new patents it will be absolutely necessary that new applications be filed, embracing such lands, and that new notices be given in accordance with the new applications. The Department can not do more for the petitioner than was done for it in the former decision.

Thereupon the company proceeded anew and applied for another official mineral survey of the claims. These surveys were made and returned by Surveyor Merritt in 1903, for the claims as follows: Lone Star and Lone Star Extension, survey No. 1842; Nevada and Gazelle, survey No. 1843; and Surprise, No. 1845. These surveys, as

appears from the field notes, were based upon the location certificates of the claims and were approved by the Surveyor-General in December, 1903. They were proceeded with and treated as original or new surveys. The Pannenberg stakes and monuments are not described or referred to therein. Many of the courses and distances vary more or less widely from those laid down by Merritt on his plats of 1901.

March 17, 1904, the company filed in the Prescott land office three mineral applications based upon the last mentioned surveys, which are now Phoenix serials 022723, 022724 and 022725, respectively. Only one of these applications, 022724, is verified. So far as the record discloses publication was not made, no proofs thereof having been filed. In 1906, these application papers were called up to the General Land Office. In 1914, these dormant applications were taken up for consideration by the Commissioner and the claimant company was required to show cause why they should not be rejected because of laches. The company responded with a petition setting forth substantially the foregoing facts and asked that some mineral surveyor be directed to go upon the ground and ascertain the correct survey and identity of the claims and the land covered by the locations and that thereupon correct descriptions be incorporated in new patents to be issued in lieu of the original patents which were tendered for surrender. A copy of Mr. Fischer's affidavit and Mr. Merritt's affidavit and plats accompanied this petition.

In the Commissioner's decision of October 15, 1914, now complained of, the departmental holdings of 1902, regarding procedure, were cited and were deemed by the Commissioner controlling and binding upon him. The General Land Office accordingly declined to reopen the case on the petition and denied the same. The applications filed in 1904, appearing stale, were held for rejection for laches.

On this appeal the company reasserts its claimed right to relief and to have new and correct patents issued properly describing the mineral land appropriated and occupied by the company.

Section 2327, Revised Statutes, as amended by the act of April 28, 1904 (33 Stat., 545), in part is as follows:

Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and surveyors-general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto.

Section 2372, Revised Statutes, as amended by the act of February 24, 1909 (35 Stat., 645), provides as follows:

In all cases where an entry, selection or location has been or shall hereafter be made of a tract of land not intended to be entered, the entryman, . . . or, when the claim is by law transferable, his or their transferees, may, in any case coming within the provisions of this section, file his or their affidavit, with such additional evidence as can be secured showing the mistake as to the numbers of the tract intended to be entered . . . the Commissioner of the General Land Office, . . . if he be entirely satisfied that the mistake has been made and that every reasonable precaution and exertion has been made to avoid it, is authorized to change the entry and transfer the payment from the tract erroneously entered to that intended to be entered, if the same has not been disposed of and is subject to entry.

Paragraph 4 of departmental regulations of April 22, 1909 (37 L. D., 655), pursuant to said act, holds that the remedies of the statute are available even where patent on the erroneous entry has been issued. This accords with the decision of the Eighth Circuit Court of Appeals in the case of *Le Marchal v. Tegarden* (175 Fed., 682, 690), to the effect that the section is "general and comprehensive covering all cases of mistaken entries, whether patents may or may not have issued."

In view of the provisions of section 2327, Revised Statutes, *supra*, and of the Mining Regulations (37 L. D., 728), paragraphs 131, 132, 147 and 149, it would undoubtedly be held by the courts and by the land department in any case involving such issue that the lands actually granted and conveyed by the outstanding patents are those tracts marked and defined upon the ground by the stakes and monuments of the Pannenberg survey. See the cases of *Galbraith v. Shasta Iron Company* (76 Pac., 901); *Bell v. Skillicorn* (28 Pac., 768); *Sinnott v. Jewett* (33 L. D., 91), and *United States Mining Company v. Wall* (39 L. D., 546).

Upon the showing before the Department there can be no doubt that erroneous calls as to courses and distances are contained in the 1888 patents. The company when made aware of these errors promptly sought relief. The legislative intent to be gathered from sections 2369 to 2372, Revised Statutes, is that an entry in error because of erroneous description may be cured even after patent upon the surrender of the outstanding instrument and the relinquishment of title thereunder, and the entry be changed to the land intended to be entered if still unsold. I am of the opinion that the petitioner is entitled to such relief as the land department is able to grant. As above indicated, since the departmental decisions herein were rendered in 1902, the law applicable in the case has been materially changed.

However, upon the present record there are discrepancies between Mr. Merritt's plat made in 1901, and his survey of 1903, that are not reconcilable. That is to say, the Department at this time is un-

able to formulate a description for patent purposes by tie lines, courses and distances that will, with certainty, describe and identify these tracts within the boundaries fixed by the monuments of the 1884 survey, as they were established and existed on the ground. A further survey is, therefore, essential. The same should be made and treated as amendatory to the surveys of 1884. This amended survey should be applied for by the company and made at its expense. It should be executed with primary reference to the position on the ground of the stakes and monuments established and described by Surveyor Pannenberg in his survey of 1884. The true ties and courses and distances controlled by those monuments should be ascertained and returned. This amendatory survey if found correct and in all respects satisfactory should be approved by the Surveyor-General. Thereupon a transcript and plat thereof should be prepared for filing in the General Land Office. Upon the descriptions contained and returned in such a survey new patents could be issued giving an accurate and precise description of the lands to which the company is entitled and this without the necessity of further notice or new application proceedings. I reach this conclusion notwithstanding the decision of the Department in the case of Frank G. Peck (34 L. D., 682). There the entry record and the patent located the claim in another township and some 8 or 10 miles distant from its true locus. Neither the patent nor the patent record contained any reference to adjacent claims or other data by which the true position of the land could be located. It was there held that new and correct notice was necessary before a corrected patent be issued. In the case at bar the original survey and as well all later surveys definitely located these claims in sections 30 and 31, T. 13 N., R. 1 W. There is no question as to the claims being located in those sections. The company will accordingly be granted a reasonable time within which to apply for the requisite amendatory survey, through the regular channels, upon the approval of such survey and the filing thereof in the General Land Office, the company may surrender its outstanding patents and make a reconveyance of the title thereunder accompanied by an abstract showing the revesting of title in the Government, and thereupon if all be found satisfactory new and corrected patents will be issued in the name of the company, without further notice or proceedings. If the company so elects it may reconvey title and proceed upon the 1903 survey to acquire the claims pursuant to the pending applications by bringing the same down to date and filing proper abstract of title. Posting and publication must be had and the applications prosecuted to entries in the usual course. In the event the company fails to act, its petition will stand denied and the pending applications will be

rejected. A copy of this decision will be furnished to the Surveyor-General for his guidance.

The departmental opinions herein of June 3, 1902, and August 19, 1902, and the decision appealed from, are modified accordingly and the case is remanded for further action in harmony with the views above expressed.

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**THOMAS J. STOCKLEY.**

*Decided July 9, 1915.*

**OIL AND GAS WITHDRAWALS.**

The executive order of December 15, 1908, withdrawing certain lands in the Baton Rouge, Louisiana, land district, on account of the oil and gas deposits therein, specifically provided that all pending entries, etc., should be suspended pending investigation as to the character of the land and that final certificates should not in the meantime be issued thereon; and submission of final proof and issuance of the receiver's receipt for fees and commissions upon such suspended entries did not subject them to the operation of the confirmatory provisions of the act of March 3, 1891, so as to defeat the effect of the withdrawal or to preclude consideration of the adverse mineral report and the evidence taken at the hearing respecting the character of these lands, or bar application of the act of July 17, 1914, providing for the reservation to the United States of oil and gas deposits and the patenting of the land to entryman subject to such reservation.

*JONES, First Assistant Secretary:*

November 13, 1905, Thomas J. Stockley made homestead entry for the fractional SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  and SE.  $\frac{1}{4}$ , Sec. 5, and NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 8, T. 20 N., R. 16 W., containing 71.25 acres of land, in the Baton Rouge, Louisiana, land district.

December 15, 1908, the land was included in an Executive withdrawal on account of its oil and gas deposits.

January 5, 1909, the entryman submitted final proof upon his entry, paid the fees and commissions, and receiver's receipt issued January 16, 1909.

By Executive order dated July 2, 1910, issued under the act of June 25, 1910 (36 Stat., 847), the land was included in petroleum reserve No. 4.

Upon the basis of a report dated February 10, 1912, adverse to the entry, submitted by a special agent of the General Land Office, the Commissioner, by letter of February 27, 1912, directed that proceedings be instituted, charging that the land is mineral in character, chiefly valuable on account of its deposits of oil and gas, and that the claimant knew or should have known from surrounding conditions that the land was so valuable at the time final proof was submitted. As a result of the hearing had, the local officers and the Commissioner found the land to be oil in character, and for this

reason the entry was, by Commissioner's decision of December 22, 1913, held for cancellation. An appeal filed on behalf of entryman from that decision has received careful consideration, and the Department finds, upon examination of the record, that the decisions below as to the character of the land were warranted by the evidence.

The question has arisen as to whether or not, final receipt having issued, as hereinbefore stated, January 16, 1909, the confirmatory provisions of the act of March 3, 1891 (26 Stat., 1095), have operated so as to preclude consideration of the adverse mineral report, the evidence taken at the hearing, and the application to this case of the act of Congress approved July 17, 1914 (38 Stat., 509), providing for the reservation to the United States of oil and gas deposits and the patenting of the land to entrymen subject to such reservation.

As already recited, the lands were withdrawn by the Executive December 15, 1908, prior to the submission of final proof, and that this withdrawal was legal and binding is confirmed by the decision of the Supreme Court of the United States February 23, 1915, in the case of *United States v. Midwest Oil Company et al.* Said withdrawal expressly provided that—

Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior to date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects. You will place such suspended cases in a file in your office and for the information of this office prepare and forward a schedule thereof with your monthly returns upon Form 4-115.

The effect of this order was to suspend this and other entries in like situation and the receipt issued by the receiver in this case was merely an evidence of the payment of fees and commissions and did not and could not relieve the entry from the suspension created by said order of December 15, 1908.

Under the circumstances it must be held that the submission of final proof, the payment of the fees and commissions and the issuance of receiver's receipt therefor did not operate to defeat the effect of the withdrawals theretofore, and thereafter within less than two years after date of said receipt, made, and the subsequent investigation by this Department to determine and verify the character of the land, whether mineral or nonmineral, to the end that the withdrawal might be modified or vacated if the land be found to be nonmineral or that the act of July 17, 1914, be given application if the land be determined to be mineral in character.

The investigations made and the evidence submitted convince the Department that the lands are, and were at date of final proof,

valuable for their deposits of oil or gas, and that consequently this Department is, under the circumstances, without authority to issue final certificate and patent for said land, including the said mineral deposits. If patent be issued to the entryman, it must be under the provisions of the act of July 17, 1914, *supra*, reserving to the United States the deposits of oil and gas in the land. The decision of the Commissioner, finding the lands to be mineral in character, is therefore affirmed, but under the circumstances the Department finds no evidence of bad faith existent at the time of the original entry in 1906 and is of the opinion that the entryman may be given a limited patent under the act of July 17, 1914. As thus modified, the Commissioner's decision is affirmed, and should this decision become final, the entryman will be permitted to take patent under the provisions of said act of July 17, 1914.

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**THOMAS J. STOCKLEY.**

Motion for rehearing of departmental decision of July 9, 1915, 44 L. D., 178, denied by First Assistant Secretary Jones August 26, 1915.

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**GAUSS v. PHELPS.**

*Decided July 10, 1915.*

**CONTEST FOR ABANDONMENT—SIX MONTHS' PERIOD.**

The six months' period after the expiration of which a contest on the ground of abandonment will lie against a homestead entry begins to run from the date of the allowance of the entry by the register, and not from the date the entryman receives notice of such allowance.

**JONES, *First Assistant Secretary:***

Henry W. Phelps has appealed from the decision of the Commissioner of the General Land Office, dated December 8, 1914, affirming the action of the register and receiver, who held for cancellation his homestead entry, made on September 23, 1910, for lots 1 and 2, E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , and NE.  $\frac{1}{4}$ , Sec. 17, T. 35 N., R. 1 W., M. M., Great Falls, Montana, land district, as the result of a contest by Henry Gauss, charging abandonment and failure to cultivate and improve the land.

The material facts in the case are set forth in the decision appealed from and need not, therefore, be repeated. This appeal is chiefly predicated upon the contention made by the entryman that his failure to comply with the law should be excused, for the reason that he did not receive notice of the allowance of said entry until February 18, 1913, which was only three months and eleven days prior to the

institution of this contest. Assuming it to be true that he did not receive notice that his entry was allowed, such fact would be no defense to the charge made against his entry. Under the express terms of the homestead laws, proof of abandonment or failure to reside upon the land for more than six months after the date of the entry, which is the date upon which it is allowed by the register, warrants the cancellation of the entry. While the practice and the regulations of the Department require notice to the entryman of the allowance of his application, it has never been, for obvious reasons of administration, as well as of law, held that the statute was suspended or waived by the failure of the entryman to receive such notice or that the validity of the entry and the claimant's obligations thereunder were dependent upon proof that he had actually received such a notice. It is unnecessary, in this case, to discuss the effect, upon a contest for abandonment, of proof that the entryman, without fault or laches on his part, had not received notice that his entry had been allowed. In this case the entryman for more than two years after the allowance of his application made no inquiry of the local office or other attempt to be advised in the premises, and at the hearing, more than a year subsequent to the time when he admits notice of the allowance of his application, he was still in total default in the matter of compliance with the law.

The Commissioner correctly held that the appellant had been guilty of such laches as to render his plea of want of notice of no avail. He might have properly added that under the facts disclosed by the record, it is manifest that such plea was a mere subterfuge or afterthought.

The decision appealed from is affirmed.

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### AMENDMENT OF ENTRIES UNDER SEC. 2372, R. S.

#### CIRCULAR.

[No. 423.]

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

*Washington, D. C., July 10, 1915.*

REGISTERS AND RECEIVERS,

UNITED STATES LAND OFFICES.

SIRS: Section 2372, United States Revised Statutes, as amended by the act of Congress approved February 24, 1909 (35 Stat., 645), reads as follows:

SEC. 2372. In all cases where an entry, selection, or location has been or shall hereafter be made of a tract of land not intended to be entered, the entryman, selector, or locator, or, in case of his death, his legal representatives, or, when

the claim is by law transferable, his or their transferees, may, in any case coming within the provisions of this section, file his or their affidavit, with such additional evidence as can be procured showing the mistake as to the numbers of the tract intended to be entered and that every reasonable precaution and exertion was used to avoid the error, with the register and receiver of the land district in which such tract of land is situate, who should transmit the evidence submitted to them, in each case, together with their written opinion both as to the existence of the mistake and the credibility of every person testifying thereto, to the Commissioner of the General Land Office, who, if he be entirely satisfied that the mistake has been made and that every reasonable precaution and exertion has been made to avoid it, is authorized to change the entry and transfer the payment from the tract erroneously entered to that intended to be entered, if the same has not been disposed of and is subject to entry, or if not subject to entry, then to any other tract liable to such entry, selection, or location; but the oath of the person interested shall in no case be deemed sufficient, in the absence of other corroborating testimony, to authorize such change of entry, nor shall anything herein contained affect the right of third persons.

For the purpose of governing the administration of the provisions of this statute and to define the circumstances under which amendments of entries will be granted pursuant to its provisions, or by virtue of the authority of the department to recognize and establish rights and equities not strictly within the purview and contemplation of such statute, the following rules are provided and will be followed:

1. Applications for amendment must be filed in the local land office of the United States having jurisdiction over the land sought to be entered, and should be substantially in accordance with the printed form herewith. This form may be used for the amendment of nonmineral entries where the applicant is either the original entryman, the assignee, or transferee, by making such modifications as the facts may justify. Each application must be verified by the oath of the applicant and corroborating witnesses, and must describe the land erroneously entered, as well as that desired by way of amendment, by subdivision, section, township, and range; and where the land originally intended to be entered has been disposed of the applicant must describe that land also and show why he can not obtain it.

2. The application must contain a full statement of all the facts and circumstances, showing how the mistake occurred and what precautions were taken prior to the filing of the erroneous entry, selection, or location, to avoid error in the description. The showing in this regard must be complete, because no amendment will be allowed unless it is made to appear that proper precaution was taken to avoid error at the time of making the original entry, location, or selection; and where there has been undue delay in applying for amendment, the application will be closely scrutinized, and will not be allowed unless the utmost good faith is shown, and the delay explained to the entire satisfaction of the Commissioner of the General Land Office.

3. The application must also show that no timber or other thing of value has been taken from the land erroneously entered, located, or selected; that the land sought by way of amendment is not occupied or claimed by any adverse claimant; that it is of the character contemplated by the law under which the claim is presented, and, in cases of nonmineral claims, the kind and quantity of timber on each legal subdivision applied for must be stated.

4. Where no final certificate has been issued and the amendment is sought by the original claimant, it must be shown that the land embraced in the erroneous entry, location, or selection has not been sold, assigned, relinquished, or in any way encumbered, and for this purpose the affidavit of the applicant, corroborated as hereinafter required, will be sufficient; but where final certificate has issued, or where amendment is sought by a transferee, it must be shown by a certificate from the proper recording officer of the county in which the land is situated, or by satisfactory abstract of title, that the applicant is the owner of such land under the entry, location, or selection, as the case may be, and it must also be shown that there are no liens, unpaid taxes, or other incumbrance charged against the land. Where patent has been issued, reconveyance of the land embraced in the patent must be made by deed executed by the claimant, and also by his wife, if he be married, in accordance with the laws governing the execution of deeds for the conveyance of real estate in the State in which the land is situated, such deed to be accompanied by a satisfactory abstract of title or a certificate from the register of deeds in and for the county in which the land is situated, showing the title to be clear and free of incumbrance.

5. The affidavit of the applicant must be corroborated by at least two witnesses who have been well acquainted with him for a sufficient length of time to enable them to testify as to the character and reputation of the applicant for truth and veracity. At least one witness must verify the allegations of the application on his personal knowledge of the facts therein stated, so far as such facts may well be known to anyone other than the applicant, and as to other facts, including those concerning the applicant's intent or purpose, such witness may testify on information and belief.

6. The affidavit of the applicant must be executed before the register or receiver of the land office where the application is made, or before a United States commissioner, or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated, as required by the act of March 4, 1904 (33 Stat., 59). The corroborating affidavits may be made before any officer authorized to administer oaths and using a seal.

7. When an application to amend is filed in your office, you will make proper notations on your records and forward it to the General

Land Office with your monthly returns, with your recommendation written at the place indicated in the form, and thereafter you will make no disposition of the land applied for until instructed by the General Land Office.

8. When an application to amend is received in the General Land Office, together with proper report and recommendation from the register and receiver, it will be considered, and, if found satisfactory, the amendment will be allowed and proper correction made on the records, of which you will be duly advised, to the end that the necessary corrections may be made on the records of your office and the applicant properly notified. Where an application is denied, an appeal may be taken to the department.

9. Where amendments are allowed of claims upon which final proof has been submitted, and publication or posting of notice is required, republication of notice applicable to the class of entry for which application to amend is made will be required; and if the land sought by way of amendment is the land originally intended to be entered, the witnesses who testified when the final proof was made on the erroneous entry must make affidavit, showing that the land described in the application for amendment is the same land to which they intended to refer in their testimony, formerly given. If, however, the same witnesses can not be secured, or if the land sought by way of amendment is not the land originally intended to be entered, new proof must be made.

10. The statute to which the foregoing regulations refer does not, in terms, provide for amendment of an entry, selection, or location for the purpose of correcting any error other than such as affects and pertains to the description of the lands entered and intended to be entered. Nevertheless, in the exercise of its equitable power and authority, the department will grant amendment of an entry, made for the purpose of securing a home upon the public lands, or for the purpose of effecting reclamation in accordance with the provisions of the desert land law, in any case where it is satisfactorily shown that, through no fault or neglect of the entryman, the land embraced by his entry is so far unfit for, or insusceptible of, occupancy, cultivation, or irrigation, as to render it practically impossible to perform the requirements of the law thereon.

11. Amendment for the purpose of enlarging the area of a desert land entry will be granted under and in the conditions and circumstances now to be stated.

(a) In any case where it is satisfactorily disclosed that entry was not made to embrace the full area which might lawfully have been included therein because of existing appropriations of all contiguous lands then appearing to be susceptible of irrigation through and by

means of entryman's water supply, or of all such lands which seemed to be worthy of the expenditure requisite for that purpose, said lands having since been released from such appropriations.

(b) Where contiguous tracts have been omitted from entry because of entryman's belief, after a reasonably careful investigation, that they could not be reclaimed by means of the water supply available for use in that behalf, it having been subsequently discovered that reclamation thereof can be effectively accomplished by means of a changed plan or method of conserving or distributing such water supply.

(c) Where, at the time of entry, the entryman announced, in his declaration, his purpose to procure the cancellation, through contest or relinquishment, of an entry embracing the lands contiguous to those entered by him, and thereafter to seek amendment of his entry in such manner as to embrace all or some portion of the lands so discharged from entry.

12. Applications for amendment presented pursuant to rule 10 will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within one year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within one year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless*, That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under the rules given above and on the prescribed form, in so far as the same are applicable. A supplemental affidavit should also be furnished, if necessary, to show the facts.

13. Application to amend desert land entries by the addition of a new and enlarged area or by transferring the entry to lands not originally selected for entry must be accompanied by evidence of applicant's right to the use of water sufficient for the adequate irrigation of said enlarged area or of the lands to which entry is to be transferred. Such evidence must be in the form prescribed by paragraph 12 of the circular of September 30, 1910 (39 L. D.,

253), as amended March 23, 1914 (43 L. D., 203), and the provisions of paragraph 13 thereof, as amended February 25, 1915 (43 L. D., 528).

14. Where entries, selections, or locations are improperly allowed by the land department, as where the lands are not subject to such entries, selections, or locations, amendments will not be allowed, because such claims, being invalid, should be canceled, and upon cancellation thereof a new entry, selection, or location may be allowed as though the former had never been made.

15. Amendment of an entry becomes effective, by relation, as of the date of the original entry in all cases except where the effect of the amendment is to transfer the entry in its entirety to lands other than those originally selected for entry. In all cases, therefore, where amendment is granted to correct a mistake in description and to effect the entryman's original intention, or to increase merely the area embraced by the entry, such amendment will not be effective to alter the time within which the requirements of the law must be complied with. In other cases, the date of the amendment will be treated as the date of the entry and the time within which residence is to be established or proof of any kind submitted will be computed from that date.

The circular of April 22, 1909 (37 L. D., 655), and all other circulars or instructions concerning amendments incompatible herewith, are hereby revoked.

CLAY TALLMAN, *Commissioner*.

Approved:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

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FORM FOR USE IN SUBMITTING APPLICATION FOR AMENDMENT IN ACCORDANCE  
WITH FOREGOING REGULATIONS.

[Approved by the Secretary of the Interior July 10, 1915.]

DEPARTMENT OF THE INTERIOR,

*U. S. Land Office, -----*

I, -----, of ----- (post-office address), having made entry (selection or location) for the -----, section -----, township -----, range -----, ----- meridian (describe former claim by subdivision, section, township, range and meridian), do hereby apply for amendment thereof in such manner and with such effect as that, when so amended, said entry will include and embrace the following-described lands, and no others, to wit: ----- (here insert description of land which it is desired to have the amended entry embrace, in the manner as above indicated): And, being first duly sworn, upon my oath do say that I originally intended to make entry of ----- (describe lands intended to be entered); that, as the consequence of mistake and misinfor-

mation, said entry (selection or location) was not made to embrace all (or any portion) of the lands so intended to be entered, but, on the contrary, included and embraced lands not selected or intended to be entered by me, and which I do not desire to keep and retain in my said entry (selection or location); that the error or mistake from which I desire relief, and the reason why I do not desire to maintain and perfect the entry as now made and recorded, will be now stated and explained as follows: (Set out fully a statement of the cause of the error in making entry and of the reason why amendment is necessary or desirable. Applicant should also state when his error or mistake was discovered and why it was not sooner discovered.)

I do further declare that I am well acquainted with the character of the land now applied for, and with each and every legal subdivision thereof, having been upon and over each and every portion thereof; and from my personal knowledge I do swear that there is not within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or any deposit of coal, nor within the limits of said land any placer, cement, gravel, or other valuable mineral deposit; nor is there any salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes, under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral, during any part of the year, by any person or persons; that said land is essentially nonmineral land; and that my application therefor is not for the purpose of fraudulently obtaining title to mineral land; and that the land applied for is not occupied or claimed by any adverse claimant.

The character of the land applied for is as follows: (Describe the character of the land by legal subdivisions, and state amount and kind of timber on each subdivision, if any. If the application pertains to an entry under the enlarged homestead law, it should be shown whether any of the land contains merchantable timber, and whether any portion is susceptible of irrigation at a reasonable cost from any known source of water supply.)

Applicant further avers that the lands embraced in his entry, as now existing and of record, are in the same state and condition as when entry was made by him, no timber or other thing of value having been removed therefrom by applicant, or by any other person, by his procurement, or with his consent and acquiescence; that I have not sold, assigned, transferred, or relinquished said land, or any portion thereof, or obligated myself to do so.

-----  
(Sign here with full Christian name.)

I hereby certify that the foregoing affidavit was read to or by affiant, in my presence, before affiant affixed signature thereto; that affiant is to me personally known, or has been satisfactorily identified before me by ----- (give full name and post-office address); that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in ----- (town), -----, ----- (county and State), within the ----- land district, this ---- day of -----, 19--.

-----  
(Official designation of officer.)

We, ----- (give full Christian name), of ----- (give full post-office address), ----- years of age, and by occupation -----, do solemnly swear that we have been well acquainted with the above applicant for ----- years and ----- years, respectively; that we have read the statements made by

him above; that he is a person of truth and veracity; and we believe said statements to be true.

-----  
(Sign here with full Christian name.)  
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(Sign here with full Christian name.)  
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I hereby certify that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me personally known, or have been satisfactorily identified before me by ----- (give full name and post-office address); that I verily believe affiants to be credible witnesses and the identical persons hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in ----- (town), -----, ----- (county and State), within the ----- land district, this ---- day of -----, 19--.

-----  
(Official designation of officer.)  
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NOTE.—In addition to the affidavits provided for by above forms, the application must also be accompanied by the affidavit of at least one person who testifies to the facts concerning the alleged mistake from his own personal knowledge, in so far as those facts may, or might be expected to be, known to any person other than the applicant himself. Such affidavit must disclose what opportunity of knowledge the witness has had, including the extent of his acquaintance with the applicant, his familiarity with the land involved, and other pertinent facts and conditions. If the application pertains to an entry under the enlarged homestead law, the applicant's statements as to the character of the land must be corroborated.

### ALBERT A. COURSOLLE ET AL.

*Decided July 14, 1915.*

#### INDIAN ALLOTMENT—SEC. 4, ACT OF FEBRUARY 8, 1887.

A Sioux Indian who has received his *pro rata* share in the lands of his tribe, or its equivalent in scrip, as provided by the act of July 17, 1854, is disqualified from taking an allotment under the 4th section of the act of February 8, 1887, and his children, whether minors or having reached their majority, who never themselves sustained any tribal relations, are by reason of his disqualification likewise disqualified to take allotment under that section.

#### ALLOTMENT—INDIAN BLOOD—TRIBAL AFFILIATION.

Not every person possessing a degree of Indian blood and who has not received an allotment, but without tribal affiliation or relationship, is entitled to the benefits of section 4 of the act of February 8, 1887.

#### ENROLLMENT—TRIBAL MEMBERSHIP—RIGHT TO ALLOTMENT.

The fact that a name appears on the roll made in 1908 of those entitled to share in the payment of money appropriated by Congress in pursuance of a judgment of the Court of Claims in favor of the Sisseton and Wahpeton bands of Sioux Indians, does not of itself evidence a right to be recognized as a member of the tribe and entitled to allotment under the 4th section of the act of February 8, 1887.

JONES, *First Assistant Secretary*:

This is an appeal from decision of the Commissioner of the General Land Office, dated November 21, 1914, holding for rejection allot-

ment applications of the following persons claiming to be Indians of the Sioux tribe, filed at Bozeman, Montana, under the fourth section of the general allotment act of February 8, 1887 (24 Stat., 388), as amended:

July 24, 1911, Albert A. Coursolle, for the S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 3, T. 4 S., R. 19 E.

July 24, 1911, Joseph E. Coursolle, for lots 3 and 4, Sec. 3, and lot 1 and SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 4, T. 4 S., R. 19 E.

July 24, 1911, Nazard M. Coursolle, for the SW.  $\frac{1}{4}$ , Sec. 34, T. 3 S., R. 19 E.

July 1, 1913, Victor P. Coursolle, for the SE.  $\frac{1}{4}$ , Sec. 34, T. 3 S., R. 19 E., and July 2, 1913, amendatory application for the W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 34, and NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 35, T. 3 S., R. 19 E.

Said fourth section provides in part as follows:

That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations.

The act of February 8, 1887, was amended by the act of February 28, 1891 (26 Stat., 794), but section 4 as amended differs from the original section only in the first part thereof, which provides "that where any Indian entitled to allotment under existing laws shall make settlement," etc. Sections 1 and 4 of the act of February 28, 1891, were amended by section 17 of the act of June 25, 1910 (36 Stat., 855), the same language as above being preserved in section 4 as amended, the change in said section referring particularly to the quantity of land that may be allotted thereunder to Indians on the public domain, having in view the character of land allotted, whether irrigable or grazing.

Adverse proceedings were directed against the allotment applications in question, based on reports from the chief of field division charging failure on the part of applicants to make settlement on the lands as required by the fourth section of the general allotment act. The rejection of said applications by the General Land Office, however, was for the reason, based upon finding and recommendation of the Indian Office, that applicants are not entitled to allotment under said section, their father, Henry Coursolle, having received Lake Pepin half-breed scrip and, furthermore, that they have never affiliated or associated with the tribe of Indians with which membership is claimed.

By article 9 of the treaty of July 15, 1830 (7 Stat., 328), with the tribes or bands of Sioux Indians including the Sisseton tribe, a special reservation was set apart and granted for the use of the Sioux half-breeds. The United States agreed that these half-breeds should occupy the tract of country thus set apart, "they holding by the same title, and in the same manner that other Indian titles are held." The half-breeds under the treaty thus received a large and valuable portion of the property of the Sioux Nation. By act of July 17, 1854 (10 Stat., 304), it was provided as follows:

That the President be, and he is hereby, authorized, to exchange with the half-breeds or mixed-bloods of the Dacotah or Sioux nation of Indians, who are entitled to an interest therein, for the tract of land lying on the west side of Lake Pepin and the Mississippi River, in the Territory of Minnesota, which was set apart and granted for their use and benefit, by the ninth article of the Treaty of Prairie du Chien, of the fifteenth day of July, one thousand eight hundred and thirty; and for that purpose he is hereby authorized to cause to be issued to said persons, on the execution by them, or by the legal representatives of such as may be minors, of a full and complete relinquishment by them to the United States of all their right, title, and interest, according to such form as shall be prescribed by the Commissioner of the General Land Office, in and to said tract of land or reservation, certificates or scrip for the same amount of land to which each individual would be entitled in case of a division of the said grant or reservation *pro rata* among the claimants—which said certificates or scrip may be located upon any of the lands within said reservation not now occupied by actual and *bona fide* settlers of the half-breeds or mixed-bloods, or such other persons as have gone into said Territory by authority of law, or upon any other unoccupied lands subject to preemption or private sale, or upon any other unsurveyed lands, not reserved by Government, upon which they have respectively made improvements: *Provided*, That said certificates or scrip shall not embrace more than six hundred and forty, nor less than forty acres each, and provided that the same shall be equally apportioned, as nearly as practicable, among those entitled to an interest in said reservation: *And provided further*, That no transfer or conveyance of any of said certificates or scrip shall be valid.

Sec. 2. *And be it further enacted*, That the President be, and he is hereby authorized, to cause to be ascertained the number and names of the half-breeds or mixed-bloods who are entitled to participate in the benefits of the said grant or reservation as aforesaid, before the issue of the certificates or scrip provided for in the preceding section.

It appears that the mother of these applicants has no Indian blood and that their father, the above-named Henry Coursolle, is a quarter-blood Indian of the Sisseton tribe who received Lake Pepin half-breed scrip under said act of July 17, 1854. The tribal property, when divided under this act, gave to each person as provided for therein several hundred acres of land. No other Sioux Indians were recognized as having any right or interest in the lands of the reservation and they received none of the scrip authorized to be issued in payment therefor. The scrip was issued in 1856 and delivered to the father of Henry Coursolle, who was then six years of age. It was subse-

quently located and the lands patented. In 1910, upon request of the Indian Office for opinion as to whether or not, in view of the issuance and satisfaction of this scrip, Henry Coursolle was entitled to an allotment under the fourth section of the act of February 8, 1887, the Department decided as follows:

Under the provisions of this act Indians were entitled to allotment, dependent on age and family, of various quantities of land, the highest to a head of a family being one-quarter section. The act was plainly intended for the benefit of two classes of Indians: (1) those not residing on reservations, and (2) those for whose tribes no reservation had been provided by treaty or otherwise.

The Pepin half-breed Sioux were a tribe of Indians for whom a reservation was provided, and in the cession there was provided for them compensation for their interest in the reservation by issue of scrip instead of by allotments of land. They received 280 acres of scrip, entitling them to location of that quantity of public land.

As Coursolle received the land, or the evidence upon which he could locate it, to-wit, the half-breed scrip for the full quantity, he is not of either class of Indians provided for, and entitled to the benefits of section 4 of the act of February 8, 1887.

It is well settled that an Indian who has received an allotment on a reservation established for his tribe is not also entitled to an allotment on the public domain under the fourth section of the general allotment act. Where an Indian is entitled to and takes an allotment under said section, he is also authorized upon application to have allotments made to his minor children. If the parent is not entitled himself to take a fourth section allotment, he is not authorized to have allotments made on behalf of his minor children, because their rights under the provisions of the law are dependent upon his rights. It has been found that the father of these applicants, Henry Coursolle, is disqualified from taking a fourth section allotment by reason of his having received his *pro rata* share in the lands, or their equivalent, of his tribe as provided in the act of July 17, 1854. His children, the applicants herein, while minors, were also not entitled, by reason of his disqualification, to allotments under said section, and the mere incident of their having reached the age of majority does not and can not confer any independent rights upon them, in face of the fact that they never at any time sustained tribal relations.

Futhermore, the half-breed Lake Pepin scrip issued under the act of July 17, 1854, on behalf of Henry Coursolle and delivered to his father, the grandfather of the applicants herein, arose from the fact that he was a minor child of a member of the Sioux half-breeds. This scrip represented his *pro rata* share of the tribal lands set apart for such half-breeds by the treaty of 1830. To what extent, if any, Henry Coursolle recognized his tribal relations after he reached years of discretion does not appear. He married a white woman and, so far as shown, his tribal relations were, thereafter, completely

severed. The present applicants are the children of this marriage and, so far as receiving his share of the tribal lands could accomplish the fact, he had severed his tribal relations before their births and in that sense they were not born to membership in the tribe. In fact, they are making no claim whatever to tribal relation or affiliation. Whether or not the taking of an allotment by the father in the lands of his tribe, or the equivalent in scrip, so changed his status as to deprive his children of a share therein it is unnecessary here to determine. It is well settled however, that even in the case of tribal property in which each member of the tribe has an inherent interest, a member may disqualify himself and his right to share in such property be lost by change of status. But these applicants are not asking that they be given any share in tribal lands. They are asking that they be given allotments on the public domain under the fourth section of the general allotment act. It has already been determined by the Department that their father, Henry Cour-solle, is not entitled to an allotment under that section and, as herein-before stated, they cannot, under the provisions of said section, have any rights independent of his rights.

Not every person possessing a degree of Indian blood and who has not received an allotment, but without tribal affiliation or relationship, is entitled to the benefits of the fourth section. This is clearly indicated by reference to the act of March 3, 1909 (35 Stat., 781, 782), which provided:

That the Secretary of the Interior be, and he hereby is, authorized, under the direction of the President, to allot any Indian on the public domain who has not heretofore received an allotment, in such areas as he may deem proper, not to exceed, however, eighty acres of agricultural or one hundred and sixty acres of grazing lands to any one Indian, such an allotment to be made and patent therefor issued in accordance with the provision of the act of February 8, 1887 (Twenty-fourth Statutes at Large, three hundred and eighty-eight.)

This provision is apparently broad enough to include persons situated as are the applicants herein, but it is a significant fact that it was expressly repealed by the act of June 25, 1910 (36 Stat., 855), and without a saving clause as to previously filed applications. In view of the fact that a fourth section allottee is also authorized to have allotments made on the public domain for the benefit of his minor children, the effect of a ruling that would allow these allotment applications would be to also confer upon the children of applicants the right to allotment thereunder and so on *ad infinitum*, thus ignoring tribal relationship or affiliation as a test of qualification and, particularly, as in this case, the fact that the father of applicants is not himself entitled to an allotment on the public domain under the fourth section. This would be contrary to the plain provisions of the law and well-established departmental decisions construing the same. A descendant of one not himself entitled to the

benefits of the fourth section can have no superior rights thereunder to his ancestor.

It was held in the case of *Louis W. Breuninger et al.* (42 L. D., 489, 491), referring to the fourth section of the general allotment act—

To be entitled to an allotment under this section the applicant must show himself to be a member of an Indian tribe, that is to say, a member of one of those tribal organizations or "Indian Nations." Such an Indian only is entitled to allotment under the fourth section. This is implied by the words that any Indian, for whose tribe no reservation has been provided, may take an allotment. The necessary implication is that he must be a recognized member of the tribe to claim an allotment under the fourth section. Instructions of May 3, 1907 (35 L. D., 549). The privilege of taking an allotment is offered tribal Indians to induce them to abandon the tribal relation and separate themselves from the tribe.

Not every Indian within the United States is a member of an "Indian Nation" or tribe. There are many thousands of Indian descent living among the people of the United States who have wholly lost or abandoned their tribal relation and are no longer recognized by the Indian Nation as a member of it.

It was further held in said case that the mere fact that an Indian is a descendant of one whose name was at one time, borne upon the rolls and who was recognized as a member of a tribe, does not of itself make such Indian a member of a tribe.

In support of the proposition that applicants herein are recognized members of an Indian tribe, they refer to the fact that their names are on a roll made in 1908, of those entitled to share in a payment of money appropriated by Congress in pursuance of a judgment rendered by the Court of Claims in favor of the Sisseton and Wahpeton bands of Sioux Indians.

By treaty of July 23, 1851 (10 Stat., 949), these bands of Indians were to receive large sums of money and annuities, "to be paid, annually, to said Indians for the period of fifty years, commencing the first day of July, 1852." As a consequence of an outbreak of the Sisseton and Wahpeton bands of Sioux Indians in 1862, Congress passed the act of February 16, 1863 (12 Stat., 652), which abrogated and annulled all treaties with said Indians "so far as said treaties or any of them purport to impose any future obligation on the United States," and declared all annuities theretofore granted them to be forfeited to the United States. By a provision in the act of June 21, 1906 (34 Stat., 372), jurisdiction was conferred upon the Court of Claims to determine and render final judgment in a case on file in said court—

for balance, if any is found due said bands . . . for any annuities which would be due to said bands of Indians under the treaty of July twenty-third, eighteen hundred and fifty-one (Tenth Statutes at Large, page 949), as if the act of forfeiture of the annuities of said bands, approved February sixteenth, eighteen hundred and sixty-three, had not been passed, etc.

It does not necessarily follow from the fact that applicants herein were enrolled for the above-mentioned payment, that they must be treated as recognized members of an Indian tribe. The treaty of 1851 provided a fixed sum to be paid annually to the Sisseton and Wahpeton bands of Sioux Indians for fifty years. It is not shown whether the father of these applicants shared in these annuities up to the time of the act of 1863 or not; nor is it shown whether prior to the roll of 1908 applicants were ever borne on the rolls of the Sisseton and Wahpeton tribes. Presumably they were not, as their only avowed claim to tribal recognition or membership is the enrollment in 1908 for this payment. This enrollment identified the applicants not as recognized members of the tribe at that time, but merely persons entitled under the judgment of the Court of Claims to share in a sum set apart by treaty in 1851 for members of the tribe, payment of which was withheld by Congress in 1863. It is clear that the status of beneficiaries under the treaty of 1851 could thereafter so change that they would no longer be entitled to tribal recognition as required under the fourth section of the general allotment act. As shown, herein, this is what happened in the case of these applicants. It does not follow that because an Indian may be entitled to share in the benefits of his tribe, he must necessarily also be entitled to a fourth section allotment on the public domain.

The action of the Commissioner of the General Land Office in rejecting these allotment applications is hereby affirmed.

#### **CERTIFIED COPIES OF HOMESTEAD ENTRY PAPERS.**

##### **ORDER.**

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

*Washington, July 14, 1915.*

1. Hereafter no photographic certified copy of homestead entry papers, where the entry was made prior to June 22, 1874, and was for less than 160 acres, will be made, except for Government use. All certified copies of such entry papers, for other than Government use, must be typewritten. Where a blank form is used the blank spaces must be typewritten.

2. From and after this date no tracing of any signature, or imitation thereof, to papers in such homestead entries shall be made by any attorney, agent or other person, for private use. Chiefs of Divisions having the custody of this class of homestead entry papers will see that this order is complied with.

CLAY TALLMAN,

*Commissioner.*

Approved, July 14, 1915:

A. A. JONES,

*First Assistant Secretary.*

## TRIPP COUNTY MINERAL LANDS—ACT JANUARY 11, 1915.

## INSTRUCTIONS.

[No. 425.]

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

*Washington, July 15, 1915.*

REGISTER AND RECEIVER,

*United States Land Office,**Gregory, South Dakota.*

SIRS: 1. The act approved January 11, 1915 (38 Stat., 792), provides that all lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, in Tripp County, in what was formerly within the Rosebud Indian Reservation in South Dakota, as have heretofore been opened to settlement and entry under acts of Congress which did not authorize the disposal of such mineral lands, shall be open to exploration and purchase and be disposed of under the general provisions of the mining laws of the United States, and the proceeds arising therefrom shall be deposited in the Treasury for the same purpose for which the proceeds arising from the disposal of other lands within the reservation in which such mineral-bearing lands are located were deposited.

2. The territory referred to in said act is that portion of the former Rosebud Indian Reservation *in Tripp County*, South Dakota, opened to settlement and entry by the act of March 2, 1907 (34 Stat., 1230). No mineral locations or entries may be made in said area except for lands containing the minerals described in said act of January 11, 1915.

3. Applications for patents for lands described in said act of January 11, 1915, must contain, in addition to the matter required by paragraph 60 of the mining regulations, approved March 29, 1909 (37 L. D., 769), full and explicit data showing clearly that the lands sought to be patented thereunder are of the character contemplated by said act.

4. By the first proviso to said act of January 11, 1915, it is provided "that the same person, association, or corporation shall not locate or enter more than one claim, not exceeding one hundred and sixty acres in area, hereunder."

(a) Under this clause and the preceding part of the act to which it relates which provides that the lands containing the designated mineral deposits—

shall be open to exploration and purchase and be disposed of under the general provisions of the mining laws of the United States

no location or entry of a claim under said act of January 11, 1915, by a single natural person or corporation can exceed twenty acres in

area and in the case of an association no location or entry can exceed twenty acres for each individual participating therein; that is, a location by two persons cannot exceed forty acres, one by three persons can not exceed sixty acres, and one by eight persons can not exceed one hundred sixty acres.

(b) Rights obtained by location under the mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person, association, or corporation holding as assignee may make entry in his, their, or its name; provided, such person, association, or corporation has not held under said act of January 11, 1915, at any time, either as locator or entryman, any other lands; his, their or its right is exhausted by having held under said act any particular tract, either as locator or entryman, either as an individual or as a member of an association or corporation. It follows, therefore, that no application for patent or entry, made under said act, shall embrace more than one single location.

(c) In order that the conditions imposed by said first proviso may duly appear, the application for patent must contain or be accompanied by a specific statement under oath by each person whose name appears therein that he never has, either as an individual or as a member of an association or corporation, located held or entered any other lands under the provisions of said act of January 11, 1915. Where the application is by an association or corporation it must, in like form as above provided, show that each person forming the association or holding stock in the corporation, is qualified to make entry in his own right and that he is not a member of any other association or a stockholder in any other corporation which has located a claim or filed an application for other lands under the provisions of said act of January 11, 1915.

5. Said act of January 11, 1915, contains the further proviso—

That none of the lands or mineral deposits, the disposal of which is herein provided for, shall be disposed of at less price than that fixed by the applicable mining or coal-land laws, and in no instance at less than their appraised value to be determined by the Secretary of the Interior.

As soon as the register and receiver shall have filed and acted upon the mineral application for patent, and issued notice of allowance thereof, they will forward to the Chief of Field Division a duplicate of the sworn statement filed with said application for patent, which duplicate must be furnished by the mineral applicant and, among other things, fully and accurately describe the land applied for and contain the other data herein prescribed. In the letter transmitting said duplicate sworn statement the local officers will advise the Chief of Field Division as to the land for which the application for patent has been allowed, and the status of such land as shown by their records. Upon the receipt of these papers the Chief of Field

Division will docket the case and will promptly make, or cause to be made by a competent special agent, a personal examination of the land as to which the application for patent has been allowed and appraise said land for the purpose of determining the price at which the same shall be sold, which, however, must, in no event, be less than five dollars per acre, or fraction of an acre. The schedule of appraisement must be prepared in duplicate, and fully describe, by legal subdivisions, each ten-acre tract examined and valued, be signed by the appraiser and be approved by the Chief of Field Division; and, on being so completed (which must be prior to the expiration of the sixty-day period of publication of notice of application for patent), they must be at once transmitted to the register and receiver who will immediately send, by registered mail, one copy of the schedule of appraisement to the record address of the applicant for patent.

When the appraisement is completed, the register and receiver will note the price on their records, and thereafter the land will be sold at such price only, under the provisions of said act of January 11, 1915, in the absence of instructions to the contrary by the Commissioner of the General Land Office. If appraisement be not made and returned prior to the expiration of the period of newspaper publication and within 30 days thereafter, the applicant may, if duly qualified, and in the absence of other objections, purchase the land applied for at the minimum price, viz., five dollars for each acre and five dollars for each fractional part of an acre.

6. As to matters not covered by these regulations, you will, in general, be governed in the administration of said act of January 11, 1915, by the provisions of the United States mining laws and so far as applicable the regulations thereunder of March 29, 1909, and the various amendments thereof.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved, July 15, 1915:

A. A. JONES,

*First Assistant Secretary.*

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JAMES W. NICOL.

*Decided July 15, 1915.*

**MILL SITE IN NATIONAL FOREST.**

The act of June 4, 1897, making lands within forest reserves subject to entry under the existing mining laws of the United States, confers the right to locate or purchase a mill site in connection with a lode claim within a national forest.

JONES, *First Assistant Secretary:*

This is an appeal by James W. Nicol from a decision by the Commissioner of the General Land Office, dated March 1, 1915, holding

for cancellation his mineral entry No. 013312, made September 29, 1914, at Waterville, Washington, for the Lightning lode and mill site, survey 1087, as to the Lightning mill site. The reason of the Commissioner's ruling is set forth in the following quotation from his decision:

The Lightning mill site was located November 10, 1913. Said mill site is within the Chelan National Forest, and the land has been continuously within such reserve since March 1, 1898. Mineral lands in national forests were made subject to location and entry, under the provisions of the act of June 4, 1897, but mill sites are not located or entered as mineral; on the contrary, land entered as a mill site must be shown to be nonmineral in character. As this mill site was located subsequent to the reservation of the land as a part of the national forest, the entry must be held invalid to the extent of said mill site.

The Lightning lode claim, embraced in the same application for patent, was located February 5, 1900.

The particular mill site here in question is claimed under section 2337 Revised Statutes, formerly the act of May 10, 1872 (Sec. 15, 17 Stat., p. 96). The particular part of section 2337 applicable here is as follows:

Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode.

The reservation of public lands as forest reserves was authorized by section 24, act of March 3, 1891 (26 Stat., 1095). The act of June 4, 1897 (30 Stat., p. 11, at pp. 35 and 36), contains the following provisions:

It is not the purpose or intent of these provisions or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes. . . . Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations . . . and any mineral lands in any forest reservation which have been or may be shown to be such and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto shall continue to be subject to such location and entry notwithstanding any provisions herein contained.

The act of May 10, 1872, carried forward in the Revised Statutes, had as its purpose, as set forth in its title, "To promote the development of the mining resources of the United States." The mill site provision, quoted above, from section 2337, Revised Statutes, is an

essential part of the present system of mining laws. A mill site claim may be embraced in the same application for patent and be patented with the vein or lode in connection with which it is used. Such application is subject to the same requirements as to survey and notice as are applicable to veins and lodes; payment is made at the same rate as for the lode claim; and, further, a location of a mill site must be made in the same manner as a mineral claim. (Rico Townsite, 1 L. D., 556.)

The purpose and intent of the act of June 4, 1897, was to promote the mineral development of the public lands within national forests. The mineral lands were made subject to entry under the existing mining laws of the United States. As an element of the mineral development of said lands, it is necessary that the lode locator, or entryman, should be permitted to have the ancillary right of locating and purchasing a mill site. The right to locate a mill site is one granted by the existing mining laws, and is an incident under the facts in this case to the right to make mineral entry. By necessary implication, therefore, the act of June 4, 1897, *supra*, conferred the right to locate or purchase a mill site in connection with a lode claim within a national forest. The Department also understands that the practice of the General Land Office, previous to the decision here in question, has been in harmony with the above view, and similar mill sites have been patented.

The decision of the Commissioner is accordingly reversed, and the entry will be passed to patent, in the absence of other objection.

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### DELANO v. MESSER ET AL.

*Decided July 16, 1915.*

#### ASSIGNMENT OF RECLAMATION HOMESTEAD—FRAUD—JURISDICTION.

The land department has jurisdiction to determine the truth of a charge that an assignment of a homestead entry within a reclamation project, under the act of June 23, 1910, was obtained by fraud, and if found to have been so obtained, to annul the assignment.

#### RELINQUISHMENT—FRAUD—REINSTATEMENT OF ENTRY—JURISDICTION.

The land department has authority to try a charge of fraud in the procurement of a relinquishment and to reinstate the entry if the relinquishment be found to have been fraudulently obtained.

JONES, *First Assistant Secretary*:

Abraham Delano appealed from decision of January 16, 1915, denying his application for reinstatement of his relinquished homestead entries for W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 5, original, and lot 4 and SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , said Sec. 5, additional, T. 1 N., R. 4 E., T. & S. R. M., Phoenix, Arizona, land district.

November 17, 1906, Delano made original homestead entry for W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , and January 7, 1907, made additional entry for lot 4, and SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , said Sec. 5. These were combined into one entry, and January 17, 1912, he submitted five-year final proof. The matter was submitted to a special agent, who, at a date not stated, after field examination, reported the law had been complied with as to residence.

July 2, and August 26, 1902, the land was withdrawn for reclamation in the Salt River Project. Water had not been supplied for irrigation of the entry at date of final proof, nor had the reclamation charges been paid, so that no patent could be issued on the entry.

February 24, 1913, Delano assigned the SW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  and lot 4 of his entry to E. M. Messer. January 22, 1914, Messer assigned lot 4 to William Bacon.

May 21, 1913, Delano relinquished the SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$  and NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , and on the same day, Francis F. Towar applied for homestead entry for the same land. November 13, 1913, resident counsel acting for counsel of Delano, asked delay in action on Delano's relinquishment for the purpose of making a showing that the relinquishment was fraudulently obtained. The Commissioner waited action until December 8, 1913, when no showing being filed, the relinquishment was noted of record and Delano's entry canceled as to these two tracts. February 2, 1914, the Commissioner directed a special agent to investigate the circumstances of the making of the relinquishment and assignment.

May 5, 1914, before report of the special agent was filed, affidavit was filed by Delano to the effect that the assignment to Messer was fraudulently obtained without any consideration, through a breach of confidential relation between Delano and Messer. The affidavit did not charge that Bacon had notice of such fraud or participated in it. The assignment by Delano to Messer was in form a quitclaim deed for the recited consideration of \$400 in hand paid, and the assignment from Messer to Bacon was for the recited consideration of \$10, executed in form as required for deeds conveying real estate acknowledged before a notary public. It is evident, therefore, that no sufficient charge is filed against Bacon, or reasons shown why the assignment as to lot 4 should be annulled.

The Commissioner held that the entire matter of the assignment by Delano to Messer, and the relinquishment by Delano of the remainder of his entry were matters properly cognizable in the courts, not proper to be tried in the land office, and denied Delano's application for reinstatement of his entry.

As to the entry of Towar, the Commissioner directed proceedings against the entry on the charge that "said Towar has entered into an agreement with Abraham Delano to convey to the said Delano, a part

of the land embraced in his homestead entry after patent issues for the same."

Delano appealed, assigning error of the decision in holding that remedy for the alleged fraud in procuring the assignment and relinquishment must be sought only in the courts. In view of the Department, this contention is well-founded. Mere money damage is not adequate remedy for frauds of this kind depriving entryman of his home and title to land. Remedy to be adequate in such case must be specific, restoring the entryman as far as may be to all that he has lost or had before the fraud was perpetrated on him—that is, full right of an entryman with right to possession and enjoyment of the land. The act of June 23, 1910 (36 Stat., 592), provides:

From and after the filing with the Commissioner of the General Land Office of satisfactory proof of residence, improvement and cultivation for the five years required by law, persons who have; or shall make, homestead entries within reclamation projects . . . may assign such entries or any part thereof to other persons and such assignees upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same . . . may receive from the United States, a patent for the lands.

This act makes acceptance of the final proof by the land department necessary to validity of an assignment and makes it a duty of the land department to issue the patent directly to the assignee when satisfied a valid assignment has been made. It follows of necessity, therefore, that the land department has jurisdiction to decide all questions arising upon the entry and the assignment of it up to the finding that the assignee is entitled to a patent. This includes not only the proof of the assignment but of its good faith and validity. It includes a power to try a charge of fraud in obtaining the assignment. Thus in *Heirs of Ewing v. Cayton* (36 L. D., 474, 476), answering the contention that the courts gave remedy for fraud by damages, the Department held:

But the arm of the land department is not for that reason shortened so that it can not give specific relief to one defrauded of an entry of public lands by restoring the entry. So long as title to the land remains in the United States, and the sole parties concerned, or claiming right to the land, are the person defrauded and the person guilty of the fraud, or one taking benefit of the fraud with notice of it, there is ample jurisdiction in the land department to grant full and specific relief by reinstatement of the entry of the defrauded party. A fraud affecting rights claimed in public lands is not sanctified beyond scrutiny and redress of the land department so long as legal title remains in the United States. *Orchard v. Alexander* (157 U. S., 372, 381-2); *Williams v. United States* (138 U. S., 514, 524); *Oregon v. Hitchcock* (202 U. S., 60, 70).

It is a rule firmly established in the courts that the judgment of the land department is final as to the facts. *Johnson v. Towsley* (13 Wall., 72), *Carr v. Fife* (156 U. S., 494), *Gonzales v. French* (164 U. S., 338), *United States v. Minor* (114 U. S., 233), *Gardner v. Bonestell* (180 U. S., 362).

While there are cases in which the courts have reviewed questions of fraud precedent to patent inducing decisions of the land department and affecting its judgments, yet the party having the patent is presumed to have obtained it regularly and to be honestly entitled to it. One seeking to vindicate his rights against a patent on the ground of fraud is handicapped by a strong presumption against him which he must overcome. So if the land department recognizes this assignment and issues patent to the assignee, the interests of Delano would be very much prejudiced by the effect of such a judgment of the land department.

As to the relinquishment, it is not infrequent that the question of good faith of a relinquishment is brought into question and tried by the land department. If it is found that the relinquishment was not intelligently made or obtained in good faith, the practice of the land department has been to reinstate the entry thus placing the entryman in the position he was before a fraud or error deprived him of his entry. It is only by such a determination that the entryman can be restored to his right. *Heirs of Ewing v. Cayton, supra.*

The decision is therefore reversed, and Messer will be notified of the charge Delano makes against him, and ruled to show cause, if any he has, why the assignment to him should not be annulled. Towar also will be notified of the charge of fraud in procuring the relinquishment from Delano executed May 21, 1913, and to show cause why the entry should not be restored as to those tracts. Bacon also will be notified and ruled to show cause, but if it appears he was innocent of fraud, and obtained his entry in good faith for value without notice of the fraud, the assignment to him of lot 4 may be upheld on the ground of his being an innocent purchaser, even though facts may be developed which would justify cancellation of the assignment as to Messer. The record is remanded to the General Land Office with direction to proceed in accordance with this opinion.

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### INSTRUCTIONS.

*July 16, 1915.*

#### RECLAMATION HOMESTEADS—ASSIGNMENTS—ALIENS.

The act of June 23, 1910, authorizing assignments of homestead entries within reclamation projects after the submission of satisfactory final proof, does not limit such assignments to citizens of the United States; and assignment under that act may be made and patent issued to an alien, the rights thereby acquired depending upon the statutes of the State respecting the rights of aliens to acquire and hold real property.

JONES, *First Assistant Secretary:*

The Department is in receipt of your [Commissioner of the General Land Office] letter of May 8, 1915, transmitting draft of a circu-

lar relative to assignment of homestead entries in reclamation projects. Your letter of transmittal reads:

The question of the right of one, not a citizen of the United States, to take a reclamation homestead entry by assignment, under the provisions of the act of June 23, 1910 (36 Stat., 592), has arisen in this office in connection with assignments of homestead entries designated as Hailey, Idaho, serial numbers 02782 and 08628, made by the entryman of said entries to Shorchi Hondo and Takuichi Hondo, respectively. Nothing is shown in the records with reference to the nationality or citizenship of the assignees. From the names of these assignees it appears that they are of Japanese ancestry. Even if such is the case it is possible that the Hondos were born in this country, and hence are native born citizens, even though of Japanese ancestry.

... The Department has held that, as under the act above cited a Mongolian is not eligible to citizenship, a native of Japan can not acquire the right to make a homestead entry. See *Ski Hara*, 36 L. D., 277, and cases therein cited.

You are advised that the right of one not a citizen of the United States to take a reclamation homestead entry by assignment must be given by the laws of the United States. It is not a question whether such alien can take a homestead entry, but whether a homestead entry having been properly taken and perfected by proof of full compliance with the law, as to residence, cultivation, and improvement, can be assigned to an alien.

The act relating to assignment of homestead entries, *supra*, provides:

That from and after the filing with the Commissioner of the General Land Office of satisfactory proof of residence, improvement, and cultivation for the five years required by law, persons who have, or shall make, homestead entries within reclamation projects under the provisions of the act of June seventeenth, nineteen hundred and two, may assign such entries, or any part thereof, to other persons, and such assignees, upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same as provided in the said act of June seventeenth, nineteen hundred and two, may receive from the United States a patent for the lands: *Provided*, That all assignments made under the provisions of this act shall be subject to the limitations, charges, terms, and conditions of the reclamation act.

It is thus seen that the act authorizing assignments makes no other limitation on right of the assignee to take than those fixed by the reclamation act. The only limitations in that act on the right to have water service are in sections 3, 4, and 5, which are, in substance, section 3, that entries may not exceed 160 acres. The limitation in section 4 is that the area taken under one entry shall be fixed by the Secretary of the Interior on determining the practicability of the project for such area as may be reasonably required for support of a family. The limitation in section 5 is that water shall not be sold for lands in private ownership or furnished to one land owner for more than 160 acres, no water shall be furnished to a land owner unless resident on the land or in its neighborhood, and

no water right shall attach permanently until all payments therefor are made.

Another limitation is provided by act of August 9, 1912 (37 Stat., 265), in substance, that assignments and sales of land in irrigation projects shall not be made—

before final payment in full of all instalments of building and betterment charges shall have been made on account of such land in excess of one farm unit as fixed by the Secretary of the Interior as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said acts nor a water right sold or recognized for such excess.

After full compliance with the homestead law and proof thereof, acceptable to the Commissioner of the General Land Office, on entries within reclamation projects, assignment is permitted subject to subsequent compliance with the reclamation act. Neither this nor any other law requires that assignees must be citizens or qualified homesteaders. The act of June 23, 1910, *supra*, provides that such entries may be assigned and the assignees are entitled to patent by virtue of full compliance by their assignors with the requirements of the homestead law.

The limitations imposed on assignments of homestead entries are limitations not on the qualification of the person to take as assignee but on the right of the assignee to receive water service—the area for and conditions on which water service shall be given to one owner. An assignment may therefore be made to any person competent to take title if the land were patented and full title vested. The only words in the act descriptive of who may take assignment are “other persons”, which include any one competent to take title to real estate and to receive water service under the reclamation act.

Coming to the moving cause of your inquiry, the narrow question, whether a Japanese alien may take assignment of a perfected homestead entry in a reclamation project, the question resolves itself into one of local law—the competency of a Japanese alien to take title to real estate. This is a question of State policy merely, purely local, on which the States differ. In Idaho the Code, section 3058, provides: “Any person, whether citizen or alien, may take hold and dispose of property, real or personal.” It is obvious that in the State of Idaho a Japanese alien may take title to real estate and may dispose of it.

The tribunals of the United States have no authority or responsibility in administering the policies and police powers of the States. Each State has a complete system of government, with courts and administrative officers and is competent to vindicate its own laws and policy. There is not, under the law, any objection to assignment of such a homestead entry to a Japanese or any other nationality of alien. The entryman may assign it to whomsoever he wills.

The effect of such an assignment is one for a State to determine. If the assignee can not take title to real estate because he is an alien, the State authorities, in the State courts, can move against the title and escheat it to the State for disqualification of the assignee to hold it in contravention of State law and policy.

It is settled law in the United States that aliens may take by contract, that is by deed of a competent party. *Hauenstein v. Lynham* (100 U. S., 483). If conveyance is made to an alien and it is contrary to the local law or policy of the State that such alien can hold real estate, nevertheless title vests in the alien and will remain vested in him until "office found." *Craig v. Leslie* (3 Wheat., 563); *Craig v. Bradford* (3 Wheat., 594); *Doe ex dem. Gouverneur v. Robertson* (11 Wheat., 332). No private person can complain against the holding of real estate by an alien if the sovereign does not. *Osterman v. Baldwin* (6 Wall., 116); *Phillips v. Moore* (100 U. S., 208); *Cross v. De Valle* (1 Wall., 5).

The condition upon which real estate may be held by aliens is a matter resting entirely with the State legislature. *Beard v. Rowan* (9 Peters, 301); *Sullivan v. Burnett* (105 U. S., 334); *Spratt v. Spratt* (4 Peters, 393); *Hanrick v. Patrick* (119 U. S., 156). This rule extends even to mere possessory rights, as possession of a cattle range on public lands. *Griffith v. Godey* (113 U. S., 89).

It so appears that no objection exists to the assignment of such a homestead entry to a Japanese or any other alien. The United States has pledged itself by the act of June 23, 1910, *supra*, to issue patent to the assignee of one who to the extent required therein has complied with the homestead law upon an entry in a reclamation project.

You will therefore issue patents in such cases regardless of whether an assignee is an alien or not.

The proposed circular is not approved.

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### HENDRICKS v. DAMON.

*Decided July 17, 1915.*

#### REJECTION OF APPLICATION—EFFECT OF APPEAL.

Where a homestead application is rejected on the ground that the land was not subject to entry, an appeal entitles the applicant only to a judgment as to the correctness of that action at the time it was taken, and does not segregate the land from other appropriation if it in the meantime becomes subject to entry.

JONES, *First Assistant Secretary*:

The above entitled case involves the E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 23, T. 40 S., R. 9 W., W. M., Roseburg, Oregon, land district.

Upon January 7, 1914, James Hartson Damon filed homestead application 09274, for this tract, in connection with other land, which was rejected the same day, by the register and receiver, for the reason

that the land had prior thereto been reserved as a part of the Siskiyou National Forest. Damon filed an appeal to the Commissioner of the General Land Office. This tract was opened to homestead entry February 18, 1914, under the act of June 11, 1906 (34 Stat., 233), upon the applications of George W. Kincaid and T. D. Collett, neither of whom have exercised his right of preference entry under the act of June 11, 1906.

February 18, 1914, Cassius Elbert Hendricks filed his application No. 09368, for this tract, together with other land.

By decision of April 3, 1914, the Commissioner of the General Land Office held that the action of the register and receiver in rejecting Damon's application No. 09274 was correct, but since the preference right period of the applicant, under the act of June 11, 1906, *supra*, had expired, Damon's application might be allowed, if the land was still vacant.

May 7, 1914, Damon, acting upon the advice of the register and receiver, it is stated, withdrew his application No. 09274, and filed a new application No. 09480. This second application of Damon's was rejected the same day by the register and receiver, for conflict with the application of Hendricks, which the register and receiver, also upon that day, passed to homestead entry. Their action was reversed by the Commissioner of the General Land Office, in a decision dated January 23, 1915, holding Hendricks's homestead entry for cancellation as to this tract. Hendricks has appealed to the Department.

Damon filed an application for the land when it was not subject to entry. The application was rejected for that reason and an appeal filed. Hendricks filed the first application when the land became subject to entry. The case is, therefore, controlled by the decision of this Department in *Anton Reichert v. Northern Pacific Railway Company*, April 20, 1915 (44 L. D., 78). There a railroad indemnity selection was offered for land at a time when the land was not subject to that form of selection. The selection was rejected by the register and receiver upon that ground. Appeal was taken by the railroad company. The Department held that the appeal of the railroad company from the action of the register and receiver entitled it only to a judgment as to the correctness of the action at the time it was taken, and did not segregate the land from other appropriation.

Here, likewise, Damon's appeal from the action of the register and receiver in rejecting his original application, entitled him only to a judgment as to the correctness of that action, and did not segregate the land from other appropriation. Hendricks accordingly presented the first application after the land had become subject to entry, and his entry was properly allowed by the register and receiver.

The decision of the Commissioner is accordingly reversed.

## STATUS OF ST. FRANCIS RIVER SUNK LANDS, ARKANSAS.

CIRCULAR.

[No. 426.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, July 24, 1915.

*To Settlers, Entrymen, and Others:*

On December 12, 1908, and February 27, 1909, the Department of the Interior adjudged those lands situated in Tps. 11 to 16 N., R. 6 E., and Tps. 12 to 17 N., R. 7 E., in Poinsett, Craighead, and Greene Counties, Arkansas, which were left unsurveyed at the dates of the original surveys of those townships and which were meandered and shown on the township plats as the so-called St. Francis River sunk lands, to be public lands of the United States (vol. 37, Land Decisions, pp. 345 and 462).

The above referred-to decisions were made subject to a provision contained in the act of April 29, 1898 (30 Stat., 367), to the effect that the titles of persons who had purchased certain unconfirmed swamp lands within the aforesaid area, namely, the unsurveyed portions of the S.  $\frac{1}{2}$ , S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , and the S.  $\frac{1}{2}$  NW  $\frac{1}{4}$ , Sec. 28, and the N.  $\frac{1}{2}$  of Sec. 33, T. 12 N., R. 6 E., and unsurveyed portions of sections 2, 3, 4, 5, 8, 9, and 10, to the extent of 1,560.70 acres in the aggregate, constituting a part of so-called Bagwells Lake, T. 17 N., R. 7 E., should not be disturbed. Sec. 36, T. 14 N., R. 6 E., although left unsurveyed at the date of the original survey of said township, was approved and patented to the State of Arkansas as swamp land under the provisions of the act of September 28, 1850 (9 Stat., 519), and of the confirmatory act of March 3, 1857 (11 Stat., 251). The information contained herein does not apply, therefore, to said described lands.

Subsequent to the above-mentioned dates the Department of the Interior has likewise adjudged those lands situated in Tps. 11 to 16 N., Rs. 8 to 13 E., in Mississippi County, Arkansas, which were left unsurveyed at the dates of the original surveys of those townships, and which were meandered and shown on the township plats as Moon, Buford, Clear, Flat, Grassy, Walker, Carson, Hickory, Tyronza, Campbells Old Field, Big, Brown, and Round Lakes, and also the so-called sunk lands in T. 17 N., R. 8 E., and a portion of the eastern end of so-called Wappanocca Lake in T. 8 N., Rs. 8 and 9 E., to be public lands of the United States.

The original surveys were held to have been erroneous, in that the unsurveyed areas were returned as "sunk lands" or "lakes" when in fact they were in whole or in part lands in place when the

surveys were made. Accordingly surveys thereof were directed and the plats were ordered to be corrected.

All of the Government lands within the so-called sunk-land area within Tps. 11 to 16 N., R. 6 E., Tps. 12 to 17 N., R. 7 E., and T. 17 N., R. 8 E., and within the areas of so-called Moon, Buford, Clear, Flat, Grassy, Walker, Campbells Old Field, Carson, Hickory, and Tyronza Lakes have been surveyed and the supplemental plats showing those lands have been approved. The public lands within the so-called sunk land area in Tps. 11, 12, 13, and 14 N., R. 6 E., and Tps. 12, 13, and 14 N., R. 7 E., and within the above-mentioned so-called lakes, have been opened to homestead entry. The public lands within the so-called sunk land area in Tps. 15 and 16 N., R. 6 E., and Tps. 15, 16, and 17 N., R. 7 E., and T. 17 N., R. 8 E., were opened to homestead entry on July 16, 1915. Blank application forms and information relative to the formalities of entering public lands may be obtained from the register and receiver of the United States land office at Little Rock, Arkansas.

The field work with reference to the surveys of the Government lands within the areas of so-called Big, Brown, and Round Lakes has been completed and the supplemental plats based upon those surveys are now being prepared and probably will be completed within a few weeks. Due notice of the time when those plats will be considered as officially filed in the United States land office at Little Rock, Arkansas, and of the date upon which the public lands shown thereupon will be opened to homestead entry will be given by the register and receiver of that office by advertisement and otherwise.

The status of the unsurveyed areas shown upon the original plats as so-called Carters, Cypress, Dismal, Golden, Hudgens, Long, Mill, Barfield, Swan; and Young Lakes, and that lake in T. 11 N., R. 10 E., locally known as Round Lake (should be distinguished from so-called Round Lake in T. 14 N., R. 11 E.), is now under consideration, in order to determine whether or not said areas come within the same category as the above referred to areas. Field investigations have been made and hearings have been ordered for the purpose of obtaining evidence from which decisions may be rendered. Due notice will be given of the rendering of decisions at the proper time. Until decisions shall have been rendered by the Department of the Interior this office can not undertake to say whether or not any of the above referred to lands will be claimed by the Government, nor can it say how soon decisions in the cases now pending will be rendered.

Certain fragmentary tracts situated within meandered areas designated by local names such as "Little River," "Right-hand Chute of Little River," "Left-hand Chute of Little River," etc., are also being investigated for the purpose of determining whether or not they

comprise lands which should be surveyed as a part of the public domain.

All of the lands described in the preceding paragraphs are situated within the State of Arkansas, and the above information does not apply to any lands which may be similarly circumstanced, if there be such, situated in the State of Missouri. This office has not ordered any investigations in that State, and it can not say at this time whether or not any investigations will be made in the future. If lands within the latter State are being advertised for sale or disposal, such is a private enterprise in which the Government has no interest.

It is not to be implied from the foregoing description that the whole of each of the above enumerated townships was declared to be Government land. On the contrary, only those portions of the several townships which were left unsurveyed at the dates of the original surveys thereof were involved in the above-mentioned decisions. Nearly all of the lands which were originally surveyed were patented years ago to the State of Arkansas, under the provisions of the swamp-land grant of September 28, 1850 (9 Stat., 519), and the State has in turn conveyed her interests therein, so that the title is now within private ownership. The areas which were originally left unsurveyed and which the Government now claims have, however, also been claimed or are now being claimed by private interests, which allege title through purchase from the State or from the St. Francis Levee Board or from riparian claimants.

The lands described herein which the Government has asserted title to are to be considered in the same category as are other lands of the public domain, to the extent that they are open to settlement and at the proper time to entry under the homestead laws. The law permits settlers to enter upon the public lands of the United States, requiring them to mark plainly the boundaries of their claims. When opened to entry bona fide settlers, residing upon and cultivating the lands in good faith, will be given three months' prior right over all other persons to make applications for their claims. No entries or filings can be allowed for any of the aforesaid lands until after the surveys thereof have been completed and approved by the Commissioner of the General Land Office and the plats thereof filed in the United States land office at Little Rock, Ark. Full notice of the time when applications to enter may be presented will be given the public through advertisement and otherwise by the register and receiver of the latter office, to which officers all communications relative to the entering of said lands should be addressed. Neither this office nor the local United States land office at Little

Rock, Ark., has any record prior to the opening of the lands to homestead entry showing whether or not the lands are embraced within settlement claims. If the same tract of land is claimed by two or more persons the merits of the conflicting claims will be considered by the register and receiver of the local United States land office at the time that the applications to enter are filed with them, and the application of the person appearing to be entitled to make entry will be allowed. Questions involving disputes among persons desiring to settle upon or to enter public lands can not be considered prior to the date of the filing of their applications.

Persons desiring diagrams showing entire portions of all or any part of the surveyed lands which adjoin unsurveyed areas may obtain township diagrams by sending postal money order for \$1 for each diagram desired to the receiver, United States land office, Little Rock, Ark. Persons desiring photolithographic plats of townships showing the extent to which surveys have been made thereon, and also meanders which form the boundaries between lands originally surveyed and those portions of townships which were left unsurveyed at date of original survey, can obtain the same from the Commissioner of the General Land Office, Washington, D. C., by mailing 25 cents for each township plat desired. There are two plats for each township, the original survey of which has been extended or corrected. With reference to these, persons desiring plats should state whether they desire a copy of the original plat or of the amended plat, or both. When the status of any lands is requested a description thereof by township, range, and section number and sectional subdivision should be given.

The question of title to some of the above-mentioned lands which were omitted from the original surveys has been involved in suits in which decisions have been recently rendered. Two of said suits went to the United States Supreme Court, one of which, that of *Little v. Williams* (231 U. S., 335), was decided December 1, 1913; the other, that of *Chapman and Dewey Lumber Company v. St. Francis Levee District* (232 U. S., 186), was decided January 26, 1914. In the former suit the question of title to so-called Walker Lake, referred to above, was involved and the United States Supreme Court held in that case that the State of Arkansas relinquished under the terms of the compromise act of April 29, 1898 (30 Stat., 367), whatever title it may have had therein under the swamp-land grant, if the lands were in fact swamp lands at the date of the Government survey, and that, therefore, neither the St. Francis levee district nor their transferees have any title thereto. The question of whether the title has vested in the riparian owners or in the United States was left for future determination. In the latter suit the question

of title to certain portions (about 1,500 acres) of the so-called sunk-lands area in T. 12 N., R. 7 E., was involved, and the United States Supreme Court held in that case that the title to those lands (1,500 acres) is in the United States.

On February 20, 1914, the United States District Court for the Eastern Division of the Eastern District of Arkansas rendered a decision in the case of *United States v. Lee Wilson & Co. et al.*, in which it was held that the title of the area locally known as Moon Lake, referred to above, is in the United States (214 Fed., 630). An appeal was taken to the United States Circuit Court of Appeals, before which court the case is now pending.

While the decision of the issues favorable to the Government in the above referred to suits may be determinative of the issues involving the question of title to all of the sunk-land areas and lake-land areas which the Government is claiming in the above-enumerated townships, yet the Government may consider that it is advisable, in view of the claims asserted by owners of the lands originally surveyed bordering on the meander lines, to institute suits similar to the suit of *United States v. Lee Wilson & Co. et al., supra*, for the purpose of quieting title in the Government to all of the areas claimed by the Government and described in this circular the title to which has not been determined by the courts; in fact, several such suits have already been instituted. Should the courts finally determine that the title to any portion or portions of said areas is not in the Government, settlers or entrymen thereupon will undoubtedly be ousted and the Government will have no authority to prevent such ouster. This risk, therefore, must be assumed by those making settlement or entry upon said lands. In order that the Government's interests may not be prejudiced by permitting the title of the lands which it is claiming to pass into the hands of private parties, it has been determined that the issuance of final certificates and patents to any of the aforesaid lands the question of title to which has not been finally adjudicated by the courts where suits have already been instituted or where the institution of suits is contemplated, will be withheld. The question as to whether or not other suits will be instituted will be determined at the earliest practicable date, and when it shall appear that there is no further necessity for continuing the above referred to suspension the issuance of final certificates and patents will be no longer withheld.

Neither the departmental decisions nor the court decisions, referred to above, in any wise disturb the title to lands which were surveyed at the dates of the original surveys of the townships within which they are situated and which have been patented to the State of Arkansas under the provisions of the swamp-land grant, and the Government is not laying any claim to such lands.

This office can not undertake to say how soon the question of title will be adjudicated by the courts, nor when decisions will be rendered by the Department of the Interior with reference to areas now involved in cases in which hearings have been ordered; nor does it have for distribution copies of the above referred to court decisions.

This circular supersedes Circular No. 331, approved June 16, 1914 (43 L. D., 275), pertaining to the same subject.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

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JOSEPHINE VENATOR.

*Decided July 26, 1915.*

DESERT LAND ENTRY—EVIDENCE OF WATER RIGHT.

Where a desert-land entryman furnishes the best evidence obtainable of the possession of a water right sufficient to properly irrigate and reclaim the land embraced in his entry, such evidence may be accepted without requiring a certificate from the State engineer as to such water right, where it is shown that such certificate can not be furnished because the State officers have not determined the water rights in the stream from which the water is taken and will not in regular course be able to do so for several years.

JONES, *First Assistant Secretary:*

April 3, 1907, Josephine Venator made desert-land entry 02759 Burns, now Vale 0763, for the NW.  $\frac{1}{4}$ , Sec. 26, T. 26 S., R. 39 E., W. M., Vale, Oregon, land district. Final proof was submitted June 8, 1911, but certificate withheld.

February 14, 1912, adverse proceedings were directed against said entry, charging:

(1) That the irrigable portion of the land entered has not been reclaimed by irrigation and is not provided with the necessary ditches, laterals and available water.

(2) That not as much as one-eighth of the land entered has been cultivated and irrigated and reclaimed.

(3) That claimant has not procured a permanent water supply and irrigation system sufficient to irrigate all the irrigable portion of the land entered.

Upon due proceedings therefor hearing was fixed before the local officers for May 1, 1913. April 18, 1913, it was stipulated between the special agent representing the Government in this proceeding, and that against Ira K. Venator, Vale 0764, and that against Ernest Bolcof, Vale 0757, and the attorneys representing the parties in each of said three cases, that these cases be consolidated for trial purposes, "but that each of said cases shall be decided on its own merits

as shown by the testimony introduced at such consolidated hearing." The hearing took place at the time fixed, the testimony of two witnesses having been duly taken before designated officers, the Government at all times being represented by special agents, and the claimants by counsel with witnesses.

December 13, 1913, the local officers, after an extended statement of the facts shown by the testimony, joined in a decision of seventeen pages, concluding as follows:

The testimony shows that there has been a great deal of water, each year since 1909, passing by the Malheur Livestock and Land Company, which they have not been able to use with their present works, and we believe sufficient for the irrigation of the land in these claims. It is true that they have no means of storing the water for use late in the season, but it is shown that by diverting the flood waters during the early spring they are able to raise paying crops of grain, and we believe this should be considered reclamation of the land within the meaning of the desert-land act.

In view of all of the foregoing, we are of opinion that the charges have not been sustained, but on the contrary that the land has been reclaimed, more than one-eighth cultivated, and that the claimant has a right under local law to the use of the water for the irrigation thereof.

We therefore recommend that the charges be dismissed, that we be directed to issue final certificate, and that the entry proceed to patent.

November 25, 1914, the Commissioner of the General Land Office, considering the case upon the record, in an extended opinion, covering twenty pages, concluded as follows:

As has been stated, the evidence shows that crops have been raised by means of the application of water from Crowley Creek but the right of the various parties to the water of that creek have not been adjudicated by the courts of Oregon. The desert land law provides that the right to the use of water by the person conducting the same on or to any tract of desert land shall depend upon *bona fide* prior appropriation. The right of entrymen not having been finally established under state laws, they are only required to furnish the best evidence obtainable of the possession of a water right sufficient to properly irrigate and reclaim said lands (Circular of November 16, 1906, 35 L. D., 305).

The state law of 1905 (3 Lord's Oregon Laws, Section 6625), requires that notice of appropriation must be filed with the state engineer in order that an appropriator be allowed to claim under the law of the state that his appropriation should date from the time that notice was posted to that effect upon the land.

Otherwise the right to use of water dates from the time of the actual appropriation to a beneficial use. (Kinney on Irrigation and Water Rights, Vol. 2, p. 1262).

Water was first used out of Crowley Creek by these entrymen in the spring of 1909. First notice of the appropriation by the Malheur Livestock & Land Company from Crowley Creek was posted July 17, 1906, and filed of record with the county clerk and state engineer on July 22 and August 5, 1907. This appropriation was limited by the state engineer to 9.45 acre feet on 756 acres of land, or to the amount of one-eightieth of a second foot for each acre. The other permits granted by the state engineer to that company appear to be sub-

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sequent in time to the actual appropriation of the water of Crowley Creek by these entrymen. The entrymen have not filed any showing from the state engineer that they have any claim to the water which they assert they have appropriated out of Crowley Creek.

The Water Code of 1909 (3 Lord's Oregon Laws, Sections 6624-6634), compliance with which these entrymen should have made, requires that application for a permit to acquire a right to beneficial use of water must be made to the state engineer and approved by him, and when the appropriation is perfected, the State Board of Control issues a certificate of appropriation. This has not been done, except in the case of the appropriation by Ira K. and Josephine Venator out of Rapid Creek, where the state engineer on October 15, 1909, issued a permit to appropriate  $2\frac{1}{2}$  cubic feet of water per second of time for 181.1 acres of land of which 37.3 acres is situated on the S.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 26; construction was to be begun October 15, 1910, and completed October 15, 1913.

Entryman will be allowed ninety days from receipt of notice within which to furnish certificate from the state engineer that she is in undisputed possession of a sufficient water right to properly irrigate the irrigable land on this entry, about 80 acres, and to use the same in accordance with her permit or to appeal from this action within 30 days from receipt of notice. Should entryman fail or refuse to make such showing, the entry, which is hereby held for cancellation, will be canceled without further notice. Notify entryman hereof. Your decision is modified accordingly.

From this decision, requiring claimant to furnish certificate from the State Engineer that she is in undisputed possession of a sufficient water right to properly irrigate the irrigable lands on the entry, claimant has appealed to the Department.

The record has been examined and no restatement of facts is deemed necessary. The Department is convinced from the evidence that the requirements of the law have been fully met upon this entry in the matter of expenditures upon and irrigation and reclamation of the tract embraced in the entry. The only question is as to the propriety or necessity of the requirement of a certificate from the State Engineer. With the brief upon appeal and as part thereof there is filed a copy of a letter from the State Engineer of Oregon, of date December 14, 1914, as follows:

MR. A. VENATOR,

*Venator, Oregon.*

DEAR SIR: I am in receipt of yours of the 8th inst., with reference to a water right claimed by Josephine Venator in the waters of Crowley Creek.

I note that the right was initiated prior to the enactment of the Water Code in 1909. You will understand that there are two distinct classes of water rights in this state:—1st, those initiated prior to the enactment of the water code, and 2nd, those initiated subsequent to the enactment of this code. The laws apply a method for determining and placing on record all rights of the former class through a water right determination by the State Water Board. No determination of the water rights of Crowley Creek has as yet been made, and in fact it will be impossible to take up such determination for several years owing to the large amount of work before the State Water Board at the present time.

It is the practice of the U. S. Land Office to accept the best evidence obtainable of the validity of the water right. In your case the best obtainable evidence is a certified copy of the notice of the filings with the County Clerk together with

proof that the water was actually applied to the land and in my opinion the U. S. Land Office will accept this evidence. It is impossible for this office to furnish any certificate showing the validity of these rights until after the water right determination by the State Water Board.

Chapter 228, Laws of 1905, provides that a certified copy of the notice of appropriation filed with the county clerk should be filed in this office. However, all defects in the manner of posting, filing and recording notices are cured by the 1909 act, hence a notice filed with the county clerk has the same force and effect as though it was filed in this office in accordance with the provisions of the above chapter.

I would suggest that you again take the matter up with the Land Office and, if you deem it advisable, enclose a copy of this letter.

Trusting this may be of assistance to you in securing consideration, I remain,

Very respectfully,

JOHN H. LEWIS, *State Engineer.*

The statutes of the State of Oregon in regard to water rights upon desert lands have been examined, and are found to sustain the statements in the above quoted letter of the State Engineer. It thus appears that this claimant has furnished the best evidence obtainable of the possession of a water right sufficient to properly irrigate and reclaim her land (circular of November 16, 1906, 35 L. D., 305), and made effort through her husband and agent, A. Venator, to comply with the requirement of the Commissioner in the matter of furnishing certificate from the State Engineer, but is wholly unable to do so. The charges made against this entry were not sustained by the evidence adduced. The controversy as to water right is clearly made by the Malheur Livestock & Land Company and can be settled only by the courts of the State in which the land is situated.

In view of all the circumstances and conditions disclosed by the record, the Department is of the opinion that the Government proceedings against this entry should be dismissed and certificate issue upon the final proof submitted June 8, 1911, and patent in the due and regular order of business if no other sufficient objection appear, and it is so directed.

The decision appealed from, so far as the requirement of certificate from the State Engineer is concerned, is reversed.

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### AUGUST ERICKSON.

*Decided July 26, 1915.*

#### SCHOOL LAND—SETTLEMENT AFTER SURVEY.

Settlement upon a school section after survey in the field does not affect the right of the State under its school grant.

#### SCHOOL LAND—CLASSIFICATION AS COAL—INDEMNITY.

The offering by a State of school lands classified as coal as base for indemnity selections will be considered as a waiver of the State's claim to said tracts under its school grant.

JONES, *First Assistant Secretary*:

August Erickson has appealed from decision of January 12, 1914, by the Commissioner of the General Land Office, holding for cancellation, in part, his homestead entry, for conflict with the school grant of the State of Montana.

June 23, 1910, Erickson made homestead entry under the enlarged homestead act, for lots 1, 2, 7, 8, 9, 10, 15 and 16, Sec. 36, and lot 15, Sec. 25, T. 33 N., R. 58 E., M. M., Glasgow, Montana, land district. Final proof was submitted March 10, 1913, and final certificate issued March 20, 1913; residence is claimed from May 17, 1909.

It is stated by the Commissioner that his records show that subdivisinal field survey of said township was made from October 24 to 28, 1907; that the survey plat was approved May 7, 1909, and filed in the local land office April 7, 1910; that the township was designated on May 1, 1909, as subject to the provisions of the enlarged homestead act; that it was withdrawn by the Secretary on April 20, 1910, from coal filing or coal entry; embraced in Executive coal land withdrawal of July 9, 1910, and classified as to the land here involved at \$10 per acre (Letter "N" of April 7, 1911). The claimant has filed election to accept surface title, under the provisions of the act of March 3, 1909.

The Commissioner held that inasmuch as Erickson established settlement on the land after surveys in the field, his claim as to the land in Sec. 36 did not affect the rights of the State under its school grant. This view of the law is concurred in by the Department.

It is stated, however, that the State has tendered lots 1, 2, 7, 10, and part of 8, said section 36, as base for certain selections in lieu thereof. In view of the classification of said tracts as coal land, it is believed that the offering of the tracts mentioned by the State as base for indemnity selections should be considered as a waiver of the State's claim to said tracts under its school grant. Furthermore, as to the other tracts in section 36, embraced in said entry, which have not been offered as base for indemnity selections, if any, the State should be called upon to show cause why the said homestead entry should not be recognized, and the school grant considered as not applying to said land, in view of its apparent mineral character. Should the State offer no objection to the entry, or, if objection be made, and a hearing thereon be asked, and, if, as a result of the hearing, it be determined that the land was known coal land at the date of the approval of the plat of survey, then the entry will remain intact.

The decision appealed from is modified accordingly and the case is remanded for the action indicated.

**HARE ET AL. v. FRENCH.**

*Decided July 26, 1915.*

**DESERT LAND ENTRY—CHARACTER OF LAND.**

Lands containing a deposit of beauxite, carrying alumina, or aluminum oxide, but not in sufficient quantities to make them commercially valuable for the alumina contained therein, according to any known process of extracting the mineral, are not thereby excluded from appropriation under the desert land laws.

**JONES, *First Assistant Secretary:***

December 19, 1914, the Commissioner of the General Land Office affirmed the action of the local officers and dismissed the protest of Alfred W. Hare and Bret Harris against the desert land entry of Lester B. French, assignee of Lillian B. King, embracing the N.  $\frac{1}{2}$ , Sec. 18, T. 11 S., R. 15 E., S. B. M., Los Angeles, California, land district. The protest alleged that said land contained a deposit of beauxite, carrying between 24 and 27.61 alumina, or aluminum oxide, or about 12 $\frac{1}{2}$  percent of pure aluminum metal, and that the land is therefore more valuable for mineral purposes than for any other purpose.

A hearing was had upon the question of the mineral character of the land, whereupon the local officers held that the clay found upon the land, which, it was alleged, contained the mineral deposits, is not commercially valuable, for the alumina contained therein, according to any known process of extracting said mineral.

The Commissioner, as above stated, affirmed the action of the local officers and dismissed the protest subject to the right of appeal.

After due service of notice, appeal was not filed within the time required by the Rules of Practice, but one was filed later, and the explanation given for not filing same within time was that the attorneys were not familiar with the Rules of Practice, and thought they were allowed sixty days instead of thirty days within which to appeal.

The case is now here upon petition for certiorari. The Commissioner, while not required to do so by the Rules of Practice, has transmitted the entire record with the petition. The full record of the evidence adduced at the hearing, together with the exhibits filed in that connection, have received thorough examination and consideration, but no reason is seen for disturbing the action below to the effect that the preponderance of the evidence fails to show that according to any process known at present the mineral can be extracted at a cost which would justify its exploration. Clays of the character shown, or containing even a much larger percentage of alumina, exist in large quantities in different parts of the United States, but up to this time, so far as known by the Department, it has

not been found commercially valuable to work such clays for the extraction of that mineral content.

The action below appears proper, and therefore the petition is denied.

### NORTHERN PACIFIC RY. CO.

*Decided July 27, 1915.*

#### RAILROAD GRANT—INDEMNITY SELECTION—SUBSTITUTION OF BASE.

The fact that losses assigned by the Northern Pacific Railway Company to support an indemnity selection of agricultural lands might, if free, be used as bases for selections of coal and iron lands, will not warrant the release of such bases, after issuance of patent upon the selections, and the acceptance, in substitution therefor, of mineral-land losses, which are restricted to use as bases for agricultural lands only.

JONES, *First Assistant Secretary*:

This is an appeal by the Northern Pacific Railway Company from the decision of the Commissioner of the General Land Office dated April 8, 1915, denying its application to substitute as a base in support of its Fargo Indemnity List No. 14, for 23,467.88 acres, certain lands lost on account of being mineral in character for certain lands in the State of Wisconsin.

The indemnity selection list was filed March 5, 1884, in the Fargo land office. No losses were designated at that time as bases for said selections, but on October 12, 1887, the company filed a new list in which it designated the losses of certain lands in Wisconsin as bases for said selections. Again on February 17, 1892, the company filed a rearranged list in which the selection and the bases were arranged tract for tract. The lands designated as bases for said selections are situated between Superior and Ashland, Wisconsin. On November 13, 1895, in the case of Northern Pacific R. R. Co. (21 L. D., 412), the Department held that the grant to the company did not extend east of Duluth, Minnesota, and consequently it had no grant of lands coterminous with its line of road from Superior to Ashland, Wisconsin. The Department therefore directed that the company be allowed 60 days to designate new bases in place of the Wisconsin lands. The company accordingly filed as a new specification of losses certain lands in the Crow Indian Reservation, Montana. Thereafter, upon said Montana bases, the lands selected were patented.

On April 16, 1900, the Supreme Court of the United States held, in the case of *Doherty v. Northern Pacific Ry. Co.* (177 U. S., 421), *United States v. Northern Pacific Ry. Co.* (177 U. S., 435), that the company's grant extended east to Ashland, Wisconsin. The company directed the attention of the land department to these decisions and requested that the Wisconsin bases, which had been assigned in support of the selection list here in question, be reinstated and that the

Montana bases be released, upon the ground that the grant of the company within the State of Montana was largely deficient and that the Wisconsin losses did not afford valid bases for second indemnity selection in the State of Montana, whereas the Crow Indian Reservation losses in that State could be used for that purpose. This request was granted by the Department on April 12, 1902, in order that the railway company might not be prejudiced by the Department's decision of November 13, 1895, in the case of Northern Pacific R. R. Co., *supra*, which was held to be erroneous by the Supreme Court in the decisions referred to.

The substitution now requested by the company is desired because the Wisconsin lands can be used as bases for indemnity selections within the first indemnity belt anywhere along the entire line of the grant, including coal and iron lands, whereas the mineral losses are restricted to use as bases for agricultural lands only. Northern Pacific Ry. Co. (39 L. D., 314). In support of its request, the company refers to the case of Northern Pacific Ry. Co. (36 L. D., 328), in which the Department held, that where the company had used losses to support selections in the first indemnity belt that if free might be used to support selections in the second indemnity belt, substitution of other proper bases for the first indemnity selections may be permitted with a view to releasing the bases originally assigned therefor for use as bases in making second indemnity selections. It will be observed, however, that in that case the selection was unpatented and the proffered substitute bases were of similar character to the original bases. In the case here under consideration the list has been patented without inquiry as to the coal or iron character of the lands, and if the mineral bases were allowed to be substituted, as now requested, it would be necessary to have an examination made to determine whether the selected tracts contain coal or iron. This would virtually mean the reopening of a case where the selected tracts were correctly patented years ago and an examination by the Government of lands which have passed beyond the jurisdiction and control of the land department. Manifestly, such examination is unwarranted and can not be authorized.

For the reasons stated, the Commissioner's decision is affirmed and the company's request is denied.

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### BLANCHE W. PEABODY.

*Decided July 27, 1915.*

#### RECLAMATION ENTRY—ASSIGNMENT—ACT OF JUNE 23, 1910.

The act of June 23, 1910, authorizing assignments of entries within reclamation projects, after the acceptance of final proof thereon, does not limit such assignments to legal subdivisions; and an entryman may thereunder assign his entry as a whole or "any part thereof."

JONES, *First Assistant Secretary*:

Blanche W. Peabody, assignee of William B. Rawson, appealed from decision of March 10, 1915, holding for rejection Rawson's assignment to her of W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 34, T. 2 S., R. 5 E., G. & S. R. M., Phoenix, Arizona, on the ground that the assignment did not cover the entire legal subdivision.

Rawson made homestead entry for the entire SW.  $\frac{1}{4}$ , said section, on which the Commissioner of the General Land Office accepted his final proof January 25, 1913. Rawson's entry was made in the Salt River irrigation project, subject to provisions of the reclamation act. October 5, 1914, Blanche W. Peabody filed in the local office Rawson's deed conveying to her the land first above described, which the Commissioner rejected because there was no certificate of the project manager, required by paragraph 37, General Reclamation Circular of September 6, 1913 (42 L. D., 372), as amended March 6, 1914, and for the further reason that the W.  $\frac{1}{2}$  E.  $\frac{1}{2}$  is not a legal subdivision. The first objection as to the project manager's certificate has been obviated and there now depends only the question of the assignability of the fraction of the subdivision.

The act of June 23, 1910 (36 Stat., 592), provides that after acceptance of final proof of lands taken by homestead entry within a reclamation project, claimants—

may assign such acreage, or any part thereof, to other persons, and such assignees, on submitting proof of the reclamation of the land and upon payment of charges apportioned against the same as provided in said act . . . may receive from the United States a patent for the land.

The law does not require that the assignment shall be by legal subdivisions. On the contrary, it says the claimant may assign "any part thereof." The land department has no authority to legislate or change the law from what it is enacted by Congress. *Jacob A. Harris* (42 L. D., 611). When the law makes no specification of condition upon which an act may be done, the Department can not impose one. *Morrill v. Jones* (106 U. S., 466); *Williamson v. United States* (207 U. S., 425); *United States v. George* (228 U. S., 14).

The decision is therefore reversed and, if no other objection appear, the assignment will be accepted.

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HENRY H. HARPER.

*Decided July 27, 1915.*

THREE-YEAR HOMESTEAD—RESIDENCE—LEAVE OF ABSENCE.

Under the act of June 6, 1912, a homestead entryman is entitled to an absence of five months in each year, and this period should be deducted from any absence on the part of the entryman under a leave of absence in determining whether he has met the requirements of the law in the matter of residence.

JONES, *First Assistant Secretary*:

Henry H. Harper has appealed from the decision of the Commissioner of the General Land Office of February 12, 1914, holding for rejection his final three-year proof, submitted November 15, 1913, for the SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 14, NE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , and NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 23, T. 13 N., R. 3 E., B. H. M., Bellefourche, South Dakota, land district, upon the ground that the proof was prematurely submitted, in that three years had not elapsed from the time residence was established on September 1, 1910.

It appears that entryman has expended some \$600 in improvements, consisting of a frame house 12 by 14; barn 12 by 30; bunk house; hay corral; small reservoir; and that he has fenced and cross fenced the land.

In the season of 1911, he broke 22 acres and planted 15 acres in corn, oats and garden, but the crop was a failure on account of drought.

In the season of 1912, he was granted a twelve months leave of absence because of crop failure the previous year, but was away only six months and eight days, or from March 6, to September 14.

In the season of 1913, he planted 22 acres to corn, wheat, oats and alfalfa, but the crop was again a failure on account of drought.

The Commissioner held that under the provisions of the act of June 6, 1912 (37 Stat., 123), the failure to cultivate during the year 1912 did not break the continuity of the cultivation required by the act, but that claimant could not be allowed credit for residence during said period of six months and eight days he was away under leave of absence, for the reason that such period may not, under the terms of the act of March 2, 1889 (25 Stat., 854), be deducted from the actual residence required by law. That, therefore, after deducting the said period, three years had not elapsed from the time residence was established on September 1, 1910, and consequently claimant's final proof was prematurely submitted.

The sole objection to the acceptance of this proof is that claimant was absent from his homestead in the year 1912 for a period of six months and eight days under a leave of absence. This leave of absence was granted for twelve months, commencing March 6, 1912. Claimant returned to the homestead on September 14, 1912, and continued to reside there without interruption until the submission of his final proof on November 15, 1913.

His residence in each year was as follows:

From September 1, 1910, to September 1, 1911, 12 months.

From September 1, 1911, to September 1, 1912, 6 months and 6 days.

From September 1, 1912, to September 1, 1913, 11 months and 16 days.

From September 1, 1913, to November 15, 1913, 2 months and 15 days.

Under the act of June 6, 1912, *supra*, claimant was entitled to an absence of five months. The full period of six months and eight days he was away under leave of absence, should not, therefore, be charged against entryman. The five months absence allowed by the act should be deducted from the five months and twenty-four days he was actually away during the second year, which would leave twenty-four days the actual period of absence he should be charged with. His final proof was submitted November 15, 1913, showing two months and fifteen days' residence in his fourth year, one month and twenty-one days longer than the three years required. There was no break in the continuity of his residence by reason of absence for twenty-four days, that period having been covered by a leave of absence, duly granted under the act of March 2, 1889, *supra*.

As it will thus be seen, the final proof of entryman was not prematurely submitted, and as his good faith is clearly shown by his improvements and cultivation, the proof is considered by the Department to be sufficient.

The decision of the Commissioner is accordingly reversed, final proof of entryman will be accepted, and if no other objections appear the entry will be passed to patent.

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**NATHANIEL J. CHAPIN.**

*Decided July 27, 1915.*

**VACATION OF PATENT—RESTORATION OF LAND.**

Where as the result of a suit by the United States to vacate and annul a patent issued under the coal land laws the lands in question are reconveyed to the United States in accordance with a compromise agreement entered into by the parties to the suit, such lands do not become subject to filing or entry until the reconveyance thereof has been duly noted upon the records of the local office.

*JONES, First Assistant Secretary:*

This is an appeal by Nathaniel J. Chapin from the decision of the Commissioner of the General Land Office of February 8, 1913, rejecting his coal declaratory statement for the NW.  $\frac{1}{4}$ , Sec. 23, T. 32 S. (erroneously described at T. 32 N.), R 64 W., 6th P. M., Pueblo land district, Colorado.

It appears that the land intended to be covered by the declaratory statement was in 1903 patented to Ruth K. Kinsey under the coal-land law. Suit was later instituted by the United States to vacate and annul the patent so issued to Kinsey, together with other patents, and as a result of said suit, and pursuant to a compromise agree-

ment entered into between the parties thereto, the tract here in question, with others, was, by deed dated March 29, 1912, reconveyed to the United States, and the suit on April 23, 1912, was dismissed. This Department, however, was not notified of the final outcome of said suit until January 23, 1913, and it was not until January 7, 1914, that the local officers were instructed by the Commissioner to give notice of the restoration of the tract here in question to entry, and even then the restoration was not to become effective until thirty days after such notice.

In the meantime, and on July 25, 1912, the coal declaratory statement of Chapin was presented, said declaratory statement alleging the possession and commencement of improvements on the land by Chapin looking to the opening of a mine of coal thereon May 26, 1912, he having been informed, he avers, of the reconveyance of the tract to the Government. The proffered filing was rejected by the local officers August 24, 1912, for the following stated reason: "Land not yet subject to entry."

The Commissioner, by the decision here complained of, affirmed the action of the local officers, holding that while the title to the tract had reverted in the Government at the date of the presentation of the declaratory statement, it was not then subject to filing or entry, and could not so become, under departmental rulings, until the reconveyance had been duly made a matter of record in the local office.

There was no error in this holding of the Commissioner. In the case of *Alice M. Reason* (36 L. D., 279) it was held that while the final judgment of a court of competent jurisdiction operates to re-vest in the United States title to a tract once patented and to restore such tract to the public domain without action of the land department, the time when and manner in which such tract becomes open to entry "depends, as in respect to all other parts of the public domain, on action of the land department;" that the condition of lands once patented and restored to the public domain by judicial cancellation of the patent is similar to that of patented lands restored to the public domain by voluntary relinquishment of the owner; that "In respect to lands of the latter class, it was held in *Maybury v. Hazletine* (32 L. D., 41, syllabus) that:

No act should be done or permitted by the government looking to disposal of said lands until the title tendered has been examined, found satisfactory, definitely accepted, and noted on the records of the local office.

So also it was held by the Department in *Gunderson v. Northern Pacific Ry. Co.* (37 L. D., 115) that—

Though the decree of the court operated to re-vest the title in the United States, it still remained for the land department to restore the land to entry by taking such steps, in conformity with the decree, as would clear its records of the entry on which the patent vacated by the court was based. The local officers very properly declined to take these steps until directed by your office,

and the selection of the company tendered before the land was restored to entry was properly rejected.

Referring to a similar rule adopted by the Department with reference to entries canceled by it, the Supreme Court, in *Holt v. Murphy* (207 U. S., 407), said:

Such a rule, when established in the land department, will not be overthrown or ignored by the courts, unless they are clearly convinced that it is wrong. So far from this being true of this rule, we are of opinion that to enforce it will tend to prevent confusion and conflict of claims.

And in *Germania Iron Company v. James et al.* (89 Fed., 811) the Circuit Court of Appeals for the 8th circuit declared that a rule and practice established by the land department to the effect that no decision of the Commissioner or the Secretary canceling an entry should take effect as a release of the land covered thereby from appropriation or as the restoration thereof to the public domain for entry or disposal under the public-land laws until such decision had been officially communicated to the local officers, and notation of the cancellation made upon their records, was "fair, fitting, just, and reasonable," and that a disregard of such rule by the land department while the same was in force constituted an error of law and entitled the party aggrieved by the disregard of the rule to the relief it sought.

There is no substantial distinction between a decree or judgment of a court of competent jurisdiction vacating or annulling a patent and a reconveyance made pursuant to a compromise agreement entered into between the Government and the opposite party to a proceeding instituted for the purpose of vacating or annulling a patent. It must be held, therefore, under the ruling above stated, that in either case the tract involved does not become subject to filing or entry until the order or decree vacating the patent or the reconveyance of the ground has been duly noted upon the records of the local office.

In the case at bar the Department itself was not officially advised of the acceptance on behalf of the Government of the deed reconveying the tract in question to it until the lapse of more than nine months after such acceptance, and nearly six months after the declaratory statement therefor was presented, while the local office had no official knowledge of the reconveyance of the land until the expiration of, respectively, twenty-one and eighteen months after said times. The necessity, therefore, to the orderly administration of the public-land laws with respect to restored patented lands for the enforcement of such a rule is well illustrated by the facts in this case.

For the reasons stated, it must be held that the proffered filing was properly rejected. The decision appealed from is accordingly affirmed.

**BRAUCHT ET AL. v. NORTHERN PACIFIC RY. CO. ET AL.***Decided July 28, 1915.***CONTESTANT—PREFERENCE RIGHT—SELECTION BY RAILROAD COMPANY.**

In the exercise of his preference right a successful contestant may procure the Northern Pacific Railway Company to make for his benefit, within the preference right period, a selection of the land under the act of July 1, 1898, if the land is at that time subject to that form of appropriation; but if the land is at that time occupied by settlers and not subject to selection by the company for its own benefit, the mere existence of the preference right in the contestant does not make it subject to such selection by the company in his behalf.

**PRIOR DEPARTMENTAL DECISIONS IN THIS CASE MODIFIED.**

Departmental decisions of March 24, 1914, and April 19, 1915, 43 L. D., 536, 538, modified to accord with the views herein expressed.

**JONES, *First Assistant Secretary*:**

In this case the Department, by its decisions of March 24, 1914, and April 19, 1915 (43 L. D., 536, 538), held that a successful contestant, might, in the exercise of his preference right of entry, avail himself of a selection under the act of July 1, 1898 (30 Stat., 597, 620), by the Northern Pacific Railway Company, in his behalf. A petition by Braucht and Lamson for the exercise, by the Department, of its supervisory authority, presents the question: Was such a selection by the railway company, on behalf of the successful contestant, Simpson, allowable, in view of the fact that the land was, when the selection was filed, settled upon by said petitioners?

Upon mature consideration, the Department has reached the conclusion that, though a railway selection, like the one here under consideration, may be properly utilized by a successful contestant in the exercise of his preference right, if the lands in question are at the time subject to that form of appropriation, it is none the less true that where they are not, in fact, then so appropriable, the existence of the preference right in the party for whose benefit the selection is proffered, does not make that which the railroad could not itself select subject to be selected by it in his behalf. The law granting a preference right to a successful contestant does not guarantee to him the right to make whatever form of entry he may choose, nor, indeed, does it guarantee to him that the land will be subject to any form of entry; his reward for clearing the record of an illegal entry is the right, superior to all others, to make an entry for which he possesses the qualifications and to which the land is legally subject at the date of his application therefor.

The right of selection granted to the Northern Pacific Railway Company under the act of July 1, 1898, *supra*, is limited to lands "free from valid adverse claim or not occupied by settlers at the time of such selection." It has never been held, and, indeed, can not

be reasonably argued, that an outstanding preference right segregates the tract affected from the public domain or prevents the making of a valid settlement thereon, which is, however, subject to be defeated by the exercise of such preference right in any manner warranted by law. At the date, therefore, of the selection of these tracts by the company they were embraced in the homestead settlements of Braucht and Lamsen and were not subject to selection by the railway company. As already stated, the fact that Simpson had a preference right of entry and that the selection was filed in her interest could not operate to make subject to selection land settled upon, when the right of selection is limited by law to tracts "free from valid adverse claim or not occupied by settlers at the time of such selection."

The former departmental decisions are modified in accordance with the foregoing, and the railway selection rejected.

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### WRIGHT ET AL. v. SMITH.

*Decided July 29, 1915.*

#### HOMESTEAD ENTRY—QUALIFICATIONS.

While a homestead application should not be allowed, after the lapse of a considerable time from the filing thereof, without a showing on the part of the applicant of his then qualifications to enter, yet where entry is allowed without such showing, and the applicant subsequently furnishes proof of his continuing qualifications to the date of the entry, it should be recognized as effective from the date of its allowance.

#### THREE-YEAR HOMESTEAD—RESIDENCE—SETTLEMENT.

An entryman submitting final proof under the act of June 6, 1912, is entitled, by virtue of the act of May 14, 1880, to claim credit for residence from the date of his settlement upon the land.

#### JONES, *First Assistant Secretary*:

The above entitled case is before the Department on petition filed by W. H. Wright, G. B. McManus and J. L. Bradford, by their attorneys, asking that the Commissioner of the General Land Office be directed to certify the record, and that the case be considered by the Department under its supervisory authority.

It appears from the petition and the exhibits filed therewith, that Annie Smith filed homestead application, April 16, 1910, for lots 2 and 7, Sec. 12, T. 10 S., R. 3 E., Baton Rouge, Louisiana; that on April 27, 1910, J. L. McManus filed homestead application for said tracts claiming priority of settlement; that a hearing was had and evidence adduced, whereupon the local officers found that McManus was not a settler on the land, and they recommended that the application of Smith be allowed; that upon appeal the Commissioner affirmed the action of the local officers, and on further appeal, the

action of the Commissioner was likewise affirmed and Smith was allowed to make entry, provided she should be duly qualified; that on December 16, 1912, Smith made entry; that on May 19, 1913, McManus filed application to contest Smith's entry, alleging that it was allowed on affidavit showing qualifications as of 1910, and not in accordance with the directions of the Department, also that the lands were in the possession of other persons at the time Mrs. Smith made her original application, and further that she was not a deserted wife, as alleged, and that she was seeking to acquire title for speculative purposes only, and had obtained possession of the house on the land through fraud and deceit, and also that the property was used for business purposes; that the local officers denied the application to contest for the reason that the issues had already been tried under the former hearing, and that a further hearing would not be warranted; that the Commissioner of the General Land Office affirmed the action of the local officers and on further appeal the Department by decision of December 10, 1913, affirmed the action of the Commissioner, holding that it was not necessary for Mrs. Smith to file a new application, it being sufficient for her to file affidavit showing her qualifications at the time of the entry, and that in any event the matter was one between the Government and the entrywoman, and that the irregularity of the local officers in allowing entry on the old affidavit did not warrant the cancellation of the entry, it being obvious from the record that her status on December 16, 1912, had not changed since the filing of her application; that a motion for rehearing was filed, but was denied by the Department February 19, 1914, and the case was accordingly closed; that on October 15, 1914, Mrs. Smith filed notice of intention to make final three-year proof, and on the date set proof was submitted, showing that crops had been raised in each and every year; that protest was filed against the proof by J. L. Bradford and W. H. Wright, but, it is alleged, that because of threats by the entrywoman and another in her behalf, they were not present at the taking of the final proof testimony; that later said parties and C. B. McManus notified the local officers that they desired to protest against any action on the final proof of Smith until they had had time to file formal opposition with evidence against the validity of the proof; that later certain affidavits were filed protesting against the acceptance of the proof; that the local officers, upon consideration of the affidavits, rejected the protests and allowed thirty days within which to appeal; that on November 30, 1914, the local officers accepted the final proof and issued final certificate; that appeal was taken to the Commissioner from the action of the local officers in dismissing the protest, and by decision of February 8, 1915, the Commissioner, after full recital of

the history of the controversy, affirmed the action of the local officers and dismissed the protest subject to the right of appeal; that appeal was filed from said action, but not within the time required by the Rules of Practice, and no evidence of service of appeal upon the opposing party having been submitted, the Commissioner by decision of May 25, 1915, declined to forward the appeal to the Department.

The present petition asks that the record be certified for departmental consideration. It is admitted that appeal was not filed from the action complained of within the time required by the Rules of Practice, but it is urged that the case should be considered by the Department under its supervisory authority. After careful consideration of the matter stated in the petition and the exhibits filed in support thereof, it would appear that this is simply an attempt to revive the old controversy, already finally adjudicated and settled. The main contention here urged is that the final proof was prematurely submitted, it being argued that the affidavit to show the qualifications of the entrywoman was not legally effective until December 16, 1912, the date of allowance of the entry, and that the act of June 6, 1912 (37 Stat., 123), requires three years' residence after the date of entry, or the filing of proper affidavit in support of an application to enter. The Department cannot assent to the conclusion here drawn from the facts recited, nor agree with this view of the law.

The entrywoman first filed her application, on April 16, 1910, as above stated, showing her qualifications to make entry. A controversy which occurred because of the adverse claim of McManus resulted in long delay before final decision upon the merits of the case, and, as a matter of precaution, the Department deemed it advisable to require Smith to show her qualifications at the time of perfecting entry. Such supplemental affidavit was not to be considered as the basis of or initiation of her right, but simply to show that her rights theretofore gained had not been lost by disqualification to enter. It was concluded, as above recited, that her status had not changed since filing her application, and that her entry should stand. Therefore, considered solely under the application and entry, the proof was not premature.

The arguments made in the petition respecting the effect of the act of June 6, 1912, amending sections 2291 and 2297, R. S., are equally fallacious. It is true that said act provides that "no certificate, however, shall be given, or patent issued therefor, until the expiration of three years from the date of such entry;" and that upon final proof residence and cultivation must be shown "for a period of three years succeeding the time of filing the affidavit."

Section 2291, R. S., prior to amendment by the said later act, contained like provisions, except that the said amendatory act reduced

the required period of residence and cultivation from five to three years.

Section 3 of the act of May 14, 1880 (21 Stat., 140), provides:

That any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States Land Office as is now allowed to settlers under the preemption laws to put their claims on record, and his right shall relate back to the date of settlement the same as if he settled under the preemption laws.

Nothing is seen to indicate that Congress intended by enactment of the law of June 6, 1912, to repeal the said provisions of the act of May 14, 1880. Repeal by implication is not favored and, furthermore, the later act in referring to the period fixed by the amended section 2291 states:

*Provided*, That the three years' period of residence herein fixed shall date from the time of establishing actual permanent residence upon the land.

The Department has never held, in consideration of the act of June 6, 1912, that rights under the homestead laws may not be initiated by settlement as provided by the said act of 1880. On the other hand, it holds that rights may be thus initiated. See recent issue of Suggestions to Homestead Settlers, dated June 1, 1915, at page 4 [44 L. D., 91]. Smith having made settlement in June, 1910, was entitled to claim credit from the time of establishing residence. As above observed, considering the rights of Smith either under her application to enter or under the settlement shown, the final proof submitted was not prematurely offered.

All other allegations of the petition, in so far as they are material, have been adjudicated. The petition is accordingly denied.

### DANIEL B. CLUSTER.

*Instructions, August 2, 1915.*

#### INDIAN ALLOTMENT APPLICATION—SEGREGATIVE EFFECT.

An Indian allotment application under section 4 of the act of February 8, 1887, filed prior to the regulations of September 23, 1913, does not, in the absence of evidence from the Indian Office showing that the applicant is an Indian entitled to allotment, segregate the land, and a subsequent application for the same land may be received and suspended to await final action on the allotment application.

#### INDIAN ALLOTMENT APPLICATION—SEGREGATIVE EFFECT.

Where an Indian allotment application under section 4 of the act of February 8, 1887, filed subsequent to the regulations of September 23, 1913, was not accompanied by evidence from the Indian Office showing applicant entitled to allotment, and the applicant was given time to furnish such evidence, the application does not segregate the land and other applications therefor may be received and held to await final action on the allotment application.

## INDIAN ALLOTMENT APPLICATION—SEGREGATIVE EFFECT.

Where an allotment application under section 4 of the act of February 8, 1887, accompanied by evidence from the Indian Office showing that the applicant is an Indian and entitled to allotment, as required by the regulations of September 23, 1913, is found to be in all other respects complete and is accepted by the local officers, it operates as a segregation of the land, and subsequent applications for the same land should be rejected.

JONES, *First Assistant Secretary*:

I have your [Commissioner of the General Land Office] memorandum of April 5, 1915, inviting attention to a proposed letter in which exception is taken to departmental decision of March 6, 1915 (44 L. D., 21), reversing the action of your office of October 8, 1914, in the case of Daniel B. Cluster, involving a question of procedure.

The facts are these. August 17, 1911, Alexander Brien, claiming to be a Chippewa Indian, filed allotment application for his minor child, Napoleon Brien, covering unsurveyed land described as the NW.  $\frac{1}{4}$  of Sec. 5, T. 35 N., R. 49 E., Glasgow, Montana, under the fourth section of the act of February 8, 1887 (24 Stat., 388), as amended.

December 5, 1913, Daniel B. Cluster filed homestead application for the land above described, which was rejected by the local land officers December 6, 1913, for conflict with the Indian allotment application. By letter of February 24, 1914, your office requested report from the Indian Office as to whether Napoleon Brien was qualified, as an Indian, to receive an allotment on the public domain, and April 1, 1914, Cluster appealed from the action of the local land officers rejecting his homestead application. October 3, 1914, your office again asked the Indian Office for report as to whether Napoleon Brien was entitled to an allotment on the public domain.

October 8, 1914, your office, no response having been received to its inquiries directed to the Indian Office, affirmed the action of the local land officers rejecting Cluster's homestead application for conflict with Brien's allotment application, it being stated by your office—

As the land applied for by Cluster was, at the time of the application, covered by an allotment application of record, and so was not subject to other appropriation, your action in rejecting his application to enter is affirmed, subject to appeal to the Department.

November 23, 1914, Cluster appealed to the Department and November 30, 1914, the Indian Office reported to your office as follows:

You are advised that the office is unable to certify that Napoleon Brien, minor child of Alexander Brien, is entitled under existing law to an allotment on the public domain. It is therefore recommended that the application be rejected.

December 28, 1914, your office, basing its action upon the above report, held the allotment application filed by Alexander Brien, on behalf of his minor child Napoleon Brien, for rejection subject to

appeal on the ground that he was not entitled to an allotment, and the record shows that no action was taken within the time allowed for appeal.

February 15, 1915, your office transmitted to the Department Cluster's appeal from your action of October 8, 1914, rejecting his homestead application. March 6, 1915, as stated, the Department rendered decision reversing said action, finding that it proceeded on an erroneous view as to the effect of an application for entry to preclude acceptance and suspension of other applications. The portion of said decision to which exception is taken reads as follows:

An application for Indian allotment no more segregates land than does an application for entry. Where an application for entry is pending and another application is later filed, the second application should not be rejected but suspended to await action on the first. Jerry Watkins, 17 L. D., 148. Cluster's application should, therefore, have been suspended to await final action on the application for Indian allotment.

For obvious reasons, as will hereafter appear, I do not regard an Indian allotment application for land on the public domain, so far as any segregative effect is concerned, as on all fours with State, railroad, and indemnity selections, reference to which is made in the proposed letter. It is urged in said letter that the Watkins case is not authority for the above conclusion in the matter of the Cluster application, for the reason that the prior application in the Watkins case corresponding to the prior allotment application in the Cluster case had been rejected by the local officers. But in view of all the facts, I am not impressed with the attempted distinction. Certainly as the Cluster case came before the Department, there is no material distinction for the reason that at that time the allotment application had been recommended for rejection by the Indian Office, to which is intrusted the duty of determining whether an applicant is qualified as an Indian to take a fourth section allotment, which rejection was of as high character and authority as rejection of an application by the local land officers.

Formerly it was the practice, in the case of an Indian allotment under the fourth section of the act of 1887, for local land officers, upon evidence of settlement on the part of an applicant and determination that the land was subject to allotment, to accept the application and forward the same to your office. A report was then obtained from the Indian Office showing whether or not the applicant is an Indian and entitled to a fourth section allotment. It was under this practice that the Brien allotment application was filed, and it is plain that until the Indian Office had reported that applicant was an Indian and entitled to an allotment on the public domain, the application could not properly be regarded in the nature of an entry.

September 23, 1913, the Department approved a recommendation from the Indian Office that thereafter all applicants for allotments on the public domain must file with the local land officers having jurisdiction of the lands applied for, a certificate from the Indian Office showing applicants to be Indians and entitled to allotments before their applications would be accepted. It was then stated that appropriate regulations would be drafted and submitted for the approval of the Department. The following draft was submitted by your office October 8, 1913:

Hereafter, any Indian presenting an application for public land for himself or herself, or for a wife or minor child, under the provisions of the fourth section of the general allotment act of February 8, 1887 (24 Stat., 388), and the acts amendatory thereof, and supplemental thereto, must file, with each application, a certificate from the Commissioner of Indian Affairs, that the applicant is an Indian belonging to a given tribe, and entitled to an allotment under the said acts, on compliance with the provisions thereof.

In the case of applications presented without such certificates within six months after the promulgation of this order, the local land officers will allow the applicant ninety days from notice in which to obtain and file such certificate, and after the expiration of said period of six months, thirty days only will be allowed.

The local land officers will advise such applicants that in case of failure to file the certificate within the time allowed, the application will be finally rejected. The local officers will send a copy of the notice to the Commissioner of Indian Affairs, and to the local Indian agent if one is known to them. Where such notice is given, the local land officers will hold the application until the certificate is furnished, or final action is taken thereon.

The local land officers will endeavor to acquaint any Indian applicant who does not furnish such a certificate with his application, of the nature of the requirement made, and advise him as to whom he shall apply for the necessary paper.

No action appears to have been taken by the Department on this draft but on July 16, 1914, your office issued a circular to local land officers calling attention to the Department's approval, on September 23, 1913, of the change of practice and advising them as follows:

In the meanwhile, pending action on the said general allotment circular, you will allow no application for an allotment under the said act, unless the applicant presents with his application a certificate from the Commissioner of Indian Affairs to the effect that the person therein named is entitled to an allotment on the public domain.

Applications accompanied by such a certificate can be allowed by you, but will be held suspended in this office until the said general circular has been issued, or other instructions received from the Department, and such applications will be subject to all requirements that are contained in the said circular, when the same is eventually issued.

Under the new practice, which requires that an application under the fourth section must be accompanied by a certificate from the Indian Office showing that applicant is an Indian and entitled as

such to an allotment under said section, the determination by the local officers that the requisite settlement has been made, that the land is subject to allotment, and acceptance by them of the application, may very properly be regarded in the nature of an entry because nothing further is required to complete the application and justify issuance of trust patent.

Necessarily, under the new procedure, there are three classes of applicants: (1) those who filed applications prior to the new regulations and which are, therefore, not accompanied by the required certificate from the Indian Office; (2) those who file applications subsequent to the new practice but whose applications are, nevertheless, not accompanied by the requisite certificate and who are given time in which to furnish the same; and (3) those whose applications are accompanied by the certificate.

(1) Where, prior to the new regulations, an allotment application was filed with no evidence from the Indian Office that the applicant is an Indian entitled to an allotment, there is no reason why other applications for the same land may not be received and suspended to await final action on the allotment application, as such an application does not segregate the land. In all such cases the Indian Office should be called upon, at once, to report whether or not the applicant is an Indian entitled to an allotment.

(2) Where, since the adoption of the new rule, an application for allotment is filed but is not accompanied by the requisite certificate from the Indian Office and the applicant is given time in which to furnish such certificate, there is no reason why other applications for the same land may not be received and held to await final action on the allotment application, as such application does not segregate the land.

(3) But where the allotment application is accompanied by the necessary certificate from the Indian Office showing the applicant to be an Indian and entitled to an allotment, such application, after determination by the local land officers that the application is in proper form, that the requisite settlement has been made, and that the land is subject to allotment, should be accepted and, thereafter, no other applications for the same land should be received by said officers but should be rejected by them as soon as filed, as, in that instance, everything requisite has been done to complete the application, which may be regarded in the nature of an entry segregating the land.

Under all the circumstances, I see no good reason for disturbing departmental decision of March 6, 1915, in the case of Daniel B. Cluster, and any different view that may heretofore have been expressed in any similar case ought not longer to be followed.

## INSTRUCTIONS.

August 3, 1915.

**HOMESTEAD ENTRY—WIDOW, HEIRS, OR DEVISEE.**

The right of a widow, heir, or devisee to complete a homestead entry which has devolved upon him or her through the death of the entryman is not affected by the fact that he or she has exhausted his or her homestead right; nor will his or her personal right to make homestead entry be affected by the fact that he or she may have completed or be engaged in completing, as widow, heir, or devisee, an entry, whether original or additional, made by a deceased homesteader, or additional by him or her, as widow, heir, or devisee.

**ENLARGED HOMESTEAD ENTRY—ADDITIONAL—WIDOW, HEIR, OR DEVISEE.**

A widow, heir, or devisee upon whom has devolved a homestead entry through the death of the entryman has the same right to make additional entry under the enlarged homestead act as the deceased entryman had, provided he or she has continued to reside upon, cultivate, and improve the land embraced in the original entry since the death of the entryman, which additional entry may be completed by residence, cultivation, and improvement upon the land embraced in the original entry.

**RESIDENCE—ELECTION BY WIDOW, HEIR, OR DEVISEE.**

In cases where the duty of the widow, heir, or devisee to reside upon the land embraced in the entry of the deceased homesteader may conflict with the duty to reside upon the land entered in his or her own right, he or she should be required to elect which claim to reside upon and perfect and which to abandon.

JONES, *First Assistant Secretary*:

The Department has considered your [Commissioner of the General Land Office] letter of June 17, 1915, requesting instructions relative to the right of the widow or heirs of a homestead entryman to make additional entry, under the enlarged homestead laws, the Department's attention being called to the cases of Lillie E. Stirling (39 L. D., 346), and the Heirs of Susan A. Davis (40 L. D., 573), and to the facts in the cases of Paul J. Lang's mother (Great Falls 034912) and Alvarez C. Van Gilder (Lewistown 028420).

You are advised that the right of a party to complete an entry which has devolved upon him or her through the death of a homestead entryman is not affected by the fact that such party has exhausted his homestead right; nor will the personal right to make homestead entry be affected by the fact that he or she may have completed or be engaged in completing, as heir, devisee, or widow, an entry, whether original or additional, made by a deceased homesteader, or additional by him or her, as heir, widow, or devisee.

The cases referred to in your letter clearly hold that the widow, heir, or devisee may make additional entry under the enlarged homestead act if they have continued to reside upon, cultivate, and improve the land embraced in the original entry since the death of the

entryman. This right, being predicated upon complete compliance with all the requirements of law, must be completed by residence, cultivation, and improvement as would have been required of the deceased entryman; in other words, the Department has recognized, as devolving upon the widow, heir, or devisee, the right of additional entry possessed by him, namely, the right to acquire the land in the additional entry by residence upon, cultivation and improvement of that originally entered.

In cases, therefore, where the duty of residing upon the land entered by the deceased homestead entryman may conflict with that of residence upon the land entered by the widow, heir, or devisee in their own right, since such claimant can not *reside* in two places at the same time, it is obvious that a rule should be laid requiring election as to which claim it is proposed to perfect and which will be abandoned.

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### FURNISHING COPIES AND PERMITTING INSPECTION OF THE RECORDS OF THE INTERIOR DEPARTMENT.

#### INSTRUCTIONS.

*Washington, August 4, 1915.*

TO ALL BUREAUS AND OFFICERS OF THE INTERIOR DEPARTMENT:

The following instructions will govern the matter of furnishing copies of official books, records, etc., of this Department, its bureaus, offices, and institutions, and the matter of inspecting such books, records, etc., under the provisions of the act of August 24, 1912 (37 Stat., 497), copy of which is appended hereto:

1. Any person desiring a copy of any such book, record, etc., within the custody of the Secretary of the Interior, the head of any bureau, office, or institution, or officer of this Department, which is subject to be furnished under section 1 of said act when not prejudicial to the interests of the Government, must make written application for such copy to such custodian, except in cases coming within the second proviso of said section, stating in such application specifically (1) the particular book, record, etc., copy of which is desired, (2) the kind of copy desired, whether written, photographic, photolithographic, tracing, blueprint, or other, and whether authenticated or unauthenticated, and (3) the purpose for which such copy is desired to be used; and shall deposit the approximate amount of the lawful charge for such copy, as provided in said act or other applicable law, rule, or regulation, which deposit will be returned to the applicant should his application be denied. Should the amount deposited be found to be insufficient to pay such lawful charge the desired copy

will not be delivered until such deficiency is paid. Any excess deposited over such lawful charge will be returned to the applicant when such copy is delivered.

2. Charges for copies in cases not coming within section 5 of said act, or the laws specified therein, will be as provided in said section 1 for all written or typewritten portions only, where printed stock forms are used, in addition to the authentication charge provided in said act, where authentication is desired.

Charges for copies, and fees for authentication thereof, of records specified in section 5 of said act for which no charge or fee is provided by law will be determined upon application to the head of the office having custody of such records.

3. Under section 2 of said act, providing that inspection of records may be permitted by any person having any particular interest therein, inspection will not be permitted of any record which is deemed to be confidential under the rules of the Department, or of any private claim, caveat, or pending application for letters patent, except upon the written authorization of the party filing same, or for other than a proper purpose to be stated by the party applying for inspection of a record, with a specification of the particular record desired to be inspected.

4. The question, under section 1 of said act, whether the furnishing of any desired copy is not prejudicial to the interests of the Government, and the questions under section 2 of said act, relating to inspection of records by person having some particular interest therein, what is such particular interest as will warrant permission being given to inspect such record, and what is a proper purpose in making inspection thereof, will be determined primarily and promptly by the custodian of a record, etc., to whom application for a copy or for inspection is made, who may, if in doubt, submit the question to his official superior with a statement of any reasons which may exist why such copy should not be furnished or inspection permitted, or may deny the application, in which event the applicant may himself submit his application to such superior official, whose decision shall be final except for gross abuse of discretion shown to the satisfaction of the head of the bureau or department.

What may be prejudicial to the interests of the Government in furnishing copy of any record, etc., or what is such particular interest in a record as may warrant its inspection by any party, or what is a proper purpose in making inspection of any record, are questions upon which no general rule can be formulated, but each case must depend upon its own facts, and any subordinate official applied to for permission to inspect a record within his custody should be satisfied,

before giving such permission, that no public or official interest would be prejudiced thereby.

5. These instructions will supersede all others in so far as in conflict or inconsistent therewith, and will be in force from and after this date.

FRANKLIN K. LANE.

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[37 STAT., 497.]

An act to make uniform charges for furnishing copies of records of the Department of the Interior and of its several bureaus.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior, the head of any bureau, office, or institution, or any officer of that department, may, when not prejudicial to the interests of the Government, furnish authenticated or unauthenticated copies of any official books, records, papers, documents, maps, plats, or diagrams within his custody, and charge therefor the following fees: For all written copies, at the rate of fifteen cents for each hundred words therein; for each photolithographic copy, twenty-five cents where such copies are authorized by law; for photographic copies, fifteen cents for each sheet; and for tracings or blue prints the cost of the production thereof to be determined by the officer furnishing such copies, and in addition to these fees the sum of twenty-five cents shall be charged for each certificate of verification and the seal attached to authenticated copies: *Provided*, That there shall be no charge for the making or verification of copies required for official use by the officers of any branch of the Government; *Provided further*, That only a charge of twenty-five cents shall be made for furnishing authenticated copies of any rules, regulations, or instructions printed by the Government for gratuitous distribution.

SEC. 2. That nothing in this act shall be construed to limit or restrict in any manner the authority of the Secretary of the Interior to prescribe such rules and regulations as he may deem proper governing the inspection of the records of said department and its various bureaus by the general public, and any person having any particular interest in any of such records may be permitted to take copies of such records under such rules and regulations as may be prescribed by the Secretary of the Interior.

SEC. 3. That all authenticated copies furnished under this act shall be admitted in evidence equally with the originals thereof.

SEC. 4. That all officers who furnish authenticated copies under this act shall attest their authentication by the use of an official seal, which is hereby authorized for that purpose.

SEC. 5. That the act of Congress approved April nineteenth, nineteen hundred and four, chapter thirteen hundred and ninety-six, be, and the same is hereby, repealed; but nothing in this act shall be so construed as to repeal the provisions of sections four hundred and ninety to four hundred and ninety-three, inclusive, and forty-nine hundred and thirty-four of the Revised Statutes, fixing the rates for patent fees; or the act approved March third, eighteen hundred and ninety-one, chapter five hundred and forty-one, fixing a rate for certifying printed copies of specifications and drawings of patents; or of section fourteen of the act of

February twentieth, nineteen hundred and five, chapter five hundred and ninety-two, to authorize the registration of trade-marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same; nor shall anything in this act be construed to repeal any of the provisions of section eight of the act approved April twenty-sixth, nineteen hundred and six, chapter eighteen hundred and seventy-six, authorizing the officer having charge of the custody of any records pertaining to the enrollment of members of the Five Civilized Tribes of Indians to furnish certified copies of such records and charge for that service such fees as the Secretary of the Interior may prescribe; nor shall anything herein contained prevent the Secretary of the Interior, under his general power of supervision over Indian affairs, from prescribing such charges or fees for furnishing certified copies of the records of any Indian agency or Indian school as he may deem proper; and the said Secretary is hereby authorized to charge a fee of twenty-five cents for each certified copy issued by him as to the official character of any officer of his department.

SEC. 6. That all sums received under the provisions of this act shall be deposited in the Treasury to the credit of miscellaneous receipts.

Approved, August 24, 1912.

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### NIENHEUSER v. MILLER ET AL.

*Decided August 4, 1915.*

#### CONTESTANT—RETROACTIVE EFFECT OF REGULATIONS.

The regulations of April 1, 1913, concerning contests and the rights of contestants, will not be given retroactive effect.

JONES, *First Assistant Secretary*:

On April 24, 1914, the Department granted the petition of Trevanion T. Reno and directed the Commissioner of the General Land Office to transmit for departmental consideration the record involving his controversy with Fred L. Nienheuser, with reference to the W.  $\frac{1}{2}$ , Sec. 26, T. 8 S., R. 56 W., Hugo, Colorado, land district. After proper service of the petition and the filing of answer thereto the record has been transmitted.

It appears that on November 11, 1909, Benjamin H. Miller made homestead entry for said tract, and that on September 18, 1911, Fred L. Nienheuser filed his affidavit of contest, charging that Miller had abandoned the land, sold his improvements, left the State of Colorado, and had executed and delivered the relinquishment of the entry to one Cookman. On September 27, 1911, Trevanion T. Reno filed said relinquishment, together with his homestead application for the lands, in the local office. The relinquishment was accepted and noted and Reno's application suspended to await action by Nienheuser, who, on September 30, 1911, presented his homestead application, which was also suspended. On October 8, 1911, Reno intervened in and filed a motion for the dismissal of

the contest because of insufficiency of the charges. On October 19, 1911, the register and receiver sustained the motion and Nienheuser appealed.

On January 4, 1912, the Commissioner of the General Land Office affirmed the action of the local officers, and on March 11, 1913, the Department reversed the action below, and directed that the case be disposed of under section 2 of the regulations of September 15, 1910 (39 L. D., 217). On July 30, 1913, Reno filed application for a hearing under the regulations mentioned, alleging that the execution of the relinquishment and its filing were not induced in any manner whatsoever by Nienheuser's contest, and that the latter was not qualified to make homestead entry of the land in question, because he had at all times since July 20, 1912, been the owner and proprietor of more than 160 acres of land in the State of Colorado; also that Nienheuser's contest had not been instituted in good faith. These charges were denied by Nienheuser, who asked dismissal of the application for hearing.

On September 30, 1913, Reno's application for hearing was denied by the register and receiver, on the ground that his allegations did not entitle him to a hearing under the regulations approved April 1, 1913 (42 L. D., 71). This action was sustained by the Commissioner of the General Land Office in his decision of December 13, 1913, whereupon the case was brought before the Department upon certiorari, as hereinbefore stated.

After mature consideration, the Department is of the opinion that the regulations of September 15, 1910, *supra*, in force at the time of the execution and filing of the relinquishment in this case and of the previous departmental action thereon, should be followed and should govern the disposition of the controversy. The regulations of April 1, 1913, *supra*, will not be given retroactive effect. The Commissioner is accordingly directed to order a hearing upon Reno's application therefor, concerning the truth or falsity of the matters alleged by him in support of his application for the land.

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**NIENHAUSER v. MILLER ET AL.**

Motion for rehearing of departmental decision of August 4, 1915, 44 L. D., 238, denied by First Assistant Secretary Jones November 30, 1915.

**FLATHEAD INDIAN RESERVATION—CUT-OVER TIMBER LANDS.****REGULATIONS.**

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., August 4, 1915.*

**REGISTERS AND RECEIVERS,**

*Kalispell and Missoula, Montana.*

SIRS: 1. The act of March 3, 1909 (35 Stat., 781, 796), amended Sec. 11 of the act of April 23, 1904 (33 Stat., 302), providing for the disposal of Flathead Indian lands, so as to read:

That all merchantable timber on said lands returned and classified by said Commission as timber lands shall be sold and disposed of by the Secretary of the Interior, for cash, under sealed bids or at public auction, as the Secretary of the Interior may determine, and under such regulations as he may prescribe: *Provided*, That after the sale and removal of the timber such of said lands as are valuable for agricultural purposes shall be sold and disposed of by the Secretary of the Interior in such manner and under such regulations as he may prescribe.

2. The lands in question, after the timber has been sold and removed therefrom, and at such time or times as may be deemed advisable, will be reexamined and such of the lands as are found to be valuable for agricultural purposes will be classified and appraised as agricultural land of the first or second class, or as grazing land, such classification and appraisal to be made under the jurisdiction of the Commissioner of Indian Affairs.

3. As soon as practicable after this office has been advised of the classification and appraisal of any of such lands, same will be opened to entry under the homestead laws only, by order of this office, at 9 a. m., on a date not less than 60 days after the date of such order, same not to be subject to settlement, prior to entry, until 9 a. m., standard time, on the thirtieth day following the date the lands became subject to entry. Attention is particularly called to the fact that no lands are at this time subject to entry or to settlement under these regulations.

4. All persons, except those who shall have been permitted to make homestead entry hereunder, and except those who made *bona fide* settlement between August 26, 1910, and June 14, 1911, and have since maintained same with continuous residence thereon and improvement thereof, who are on or are occupying any of the lands opened to entry hereunder and perform any act of settlement thereon prior to 9 a. m., standard time, on the date fixed for settlement, or who are on or are occupying any part of said lands at said hour, will be considered and dealt with as trespassers and will gain no rights

whatever under such unlawful settlement or occupancy. However, this is not to be considered as preventing persons from going upon and over the lands to examine same prior to the date of opening with a view to thereafter making entry thereof on the date the land shall become subject to entry.

5. Persons who, between August 26, 1910, and June 14, 1911, in good faith made settlement on any lands open to entry by orders issued hereunder and have since maintained such settlements, may, under and subject to the terms and provisions of these regulations, and of the laws under which they are issued, relating to payment, residence and cultivation, present their applications to enter lands so settled upon by them in person, to the register and receiver, at any time between the date on which the order for the opening of said lands is issued and the date on which applications to enter may be presented by other persons under such order. All such applications presented between the dates mentioned must be accompanied by the affidavit of the claimant, corroborated by the affidavits of two other disinterested persons, showing the date of the applicant's original settlement, the character, extent and continuity of his residence and cultivation on the land applied for, and the kind, extent and value of his improvements thereon. As soon as such applications are presented, the register and receiver will at once take action thereon and either reject them or allow entries thereunder, according as the facts warrant; and when entries are allowed under such applications the register and receiver will at once eliminate the lands so entered from the list of lands to be opened to entry under the order in which they are embraced, and post notices of said eliminations in their office. If any such settler shall fail to present a proper application to enter between the dates mentioned above, he cannot thereafter claim a preferred right to enter as against other persons, by reason of his settlement. If any application so presented is rejected by the register and receiver they will at once notify the applicant of such rejection, verbally or otherwise, and if the applicant fails to appeal from said rejection within one day after the receipt of said notice (Sunday excepted), the application will stand finally rejected and the applicant will forfeit all rights thereunder and under his settlement, and the land thus applied for will again become subject to application either by him or by any other qualified person, in the manner and on the date on which other lands embraced in the order opening them became subject to application. Applications to enter the lands embraced in any settler's rejected application may, in cases where appeals from the rejection have been filed, be presented on and after the date and in the manner in which other lands mentioned in the same order became subject to application, and when so presented

they will be received and suspended by the register and receiver, and held subject to final action on the settler's appeal, and if two or more such applications are presented and the settler's application is finally rejected, the suspended applications will be disposed of in the manner in which applications for lands not claimed by settlers are to be disposed of under the prescribed regulations.

6. All homestead applications and accompanying affidavits, for the lands herein affected, may be executed in the manner prescribed by law and, with the required fee and commissions and initial payment of one-third of the appraised price of the land, filed in the proper local land office in person, by mail, or otherwise, within the period of 20 days prior to the date fixed for entry of such lands. No priority will be secured nor right forfeited by the presentation of such application in the manner and within the time prescribed prior to the date fixed for entry, and all such applications shall, with those presented by persons present at the local office at the hour the lands become subject to entry, be held and treated as simultaneously filed at 9 a. m. on that date. Applications presented after the lands become subject to entry will be received and noted in the order of their filing. You will carefully compare all applications simultaneously filed as aforesaid and will dispose of them in the manner prescribed by circular 324 of May 22, 1914 [43 L. D., 254], as far as applicable.

7. The provisions of Sec. 9 of the act of April 23, 1904 (33 Stat., 302), shall govern as to payment of the appraised price; that is, one-third of the appraised price must be paid at the time of entry, the remainder to be paid in five equal annual installments to date from and after the date of entry. If entryman fails to make such payments, or any of them, within the time stated, all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and canceled. Entrymen may be permitted to commute their entries under Sec. 2301, Revised Statutes, by paying for the land entered the full appraised price, receiving credit for payments previously made.

8. You will furnish copies of these regulations to newspapers published in your district as a matter of news, and post a copy thereof in your office.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved, August 4, 1915:

A. A. JONES,  
*First Assistant Secretary.*

**WILLIAM C. PAYNE ET AL.**

*Decided August 5, 1915.*

**INTERMARRIAGE OF HOMESTEADERS—RESIDENCE—MILITARY SERVICE.**

Credit for military service can not be allowed in fulfillment of the one-year period of residence required by the act of April 6, 1914, which provides that upon the intermarriage of a homestead entryman and a homestead entrywoman, "after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage," they may carry both entries to completion in the manner provided by that act.

**JONES, *First Assistant Secretary*:**

William C. Payne has appealed from the decision of the Commissioner of the General Land Office, dated April 5, 1915, rejecting his election, under the act of April 6, 1914 (38 Stat., 312), to reside on the lands entered by his wife, upon the ground that there had not been previous residence on his own entry for one year.

The material facts in this case are that on March 3, 1913, William C. Payne made entry for the E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 20, T. 20 S., R. 5 W., S. L. M., Salt Lake City, Utah land district. On March 13, 1913, Elizabeth M. Payne made homestead entry for the NE.  $\frac{1}{4}$ , Sec. 29, in the same township. These parties were married on January 2, 1914. Neither alleges any residence upon the lands entered by them prior to entry. On November 30, 1914, William C. Payne filed notice of his election to make the land entered by his wife the family home, under said act of April 6, 1914.

In his appeal Payne claims credit for a year's residence by virtue of his service in Company G, First Idaho Volunteers, in the Spanish-American and Philippine war. He can not be called a resident on the lands embraced in his entry by virtue of military service. The law gives him credit for the period of his enlistment, if he was honorably discharged for wounds, as was the case in this instance, but requires at least a year's residence upon the land as a prerequisite to the allowance of such credit.

The act relating to the intermarriage of claimants (38 Stat., 312) provides that—

the marriage of a homestead entryman to a homestead entrywoman after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage shall not impair the right of either to a patent, but the husband shall elect, under rules and regulations prescribed by the Secretary of the Interior, on which of the two entries the home shall thereafter be made, and residence thereon by the husband and wife shall constitute a compliance with the residence requirements upon each entry.

It appears from the record that Payne lived upon the land entered by him from March 3, 1913, to the date of the marriage, and that

Mrs. Payne lived upon her land from March 10, 1913, to the same date. The law of the entries required but seven months' actual residence, and this requirement appears to have been fulfilled by both of these parties, as well as the requirement of cultivation.

Substantially, therefore, both had "fulfilled the requirements of the homestead law for one year next preceding such marriage."

The decision appealed from was technically correct, but the Department is unwilling to determine the question presented by the record wholly upon a technical interpretation of the statute. Let Payne's election be filed with the papers in the case, and if within the lifetime of his entry proper proof of residence upon his wife's claim and of cultivation and improvement of his own be submitted, the matter will be referred to the Board of Equitable Adjudication.

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### ARCHIBALD WILLIAMS.

*Decided August 6, 1915.*

#### SOLDIERS ADDITIONAL—BASIS OF RIGHT.

Where a homestead entryman, in pursuance of opportunity afforded him by the land department, elected to have his entry canceled *in toto*, because of conflict with a State swamp-land selection, with the privilege of exercising his homestead right elsewhere without impairment, such canceled entry furnishes no basis for a soldiers' additional right.

#### JONES, *First Assistant Secretary*:

In the above entitled case Archibald Williams has appealed from the decision of the Commissioner of the General Land Office of April 20, 1915, rejecting his application to enter lot 4, Sec. 6, T. 25 N., R. 6 W., N. M., Great Falls, Montana, land district, containing 36.43 acres, based on an assignment of 40 acres of the alleged soldiers' additional right of Frederick Minger, upon the ground that the original entry of said Minger does not constitute a proper legal basis for the right claimed by said applicant.

It appears from the record that the soldier Minger made homestead entry No. 2575 on October 20, 1869, for the N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 8; T. 94 N., R. 30 W., 5th P. M., Fort Dodge, Iowa, land district, containing 80 acres; that the land embraced in said original entry of Minger was involved in a swamp-land selection of the State of Iowa, a patent to the NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$  of said section 8 having already on March 28, 1867, been issued to the State; that by letter of the Commissioner of February 2, 1877, said Minger was informed of this fact, and that while the NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$  of said Sec. 8 had also been selected by the State, yet said selection had not been approved and patented. Minger was further informed in said letter that he would

be permitted to contest the claim of the State of Iowa to said NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , or to have his entry canceled, with the privilege of making a new entry and credit for the fee and commissions already paid, as he might elect. By letter of March 2, 1877, he elected to have his entire entry canceled upon the conditions stated, whereby his right to make homestead entry of 160 acres in lieu of the previous entry was restored.

It further appears that on March 31, 1885, said swamp selection of the State of Iowa was canceled as to said NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$  of said section 8; that thereafter Minger assigned his alleged soldiers' right, and the contention is now made by his assignees that the rejection of the swamp selection in 1885, 8 years after he elected to be restored to his homestead privilege of 160 acres, in view of the fact that Minger never exercised said privilege, established the fact that his original entry was not void *ab initio*, and was a legal entry as to 40 acres of same; that consequently, said additional right vested in said soldier, as provided in section 2306, R. S. It is insisted—and this is the only issue presented upon this appeal—that if the soldier failed to exercise the privilege granted him to make a new entry for 160 acres, although he elected so to do, and agreed to the cancellation of the original entry, nevertheless when it is found that a part of said original entry might have been completed, this fact constitutes a proper legal basis for the additional right vesting him with a property right of 120 acres, and the fact that he did not complete his original entry has no bearing on the question.

The Department does not concur in this view. In the case of John M. Underwood (31 L. D., 258) it was held (syllabus):

Where part of a homestead entry is canceled for conflict with a prior railroad grant, and the entryman thereupon elects to relinquish his entire entry, with the privilege of making a new entry elsewhere, there is no basis for a soldiers' additional right, no part of the entrymans' homestead right having been exhausted.

In the case of Andrew Fergus (29 L. D., 536) it was held (syllabus):

The widow of a soldier is not entitled to make a soldiers' additional homestead entry, if the soldier, at the time of his death, had the right to make an original entry of and perfect title to the full quantity of one hundred and sixty acres.

Minger was allowed the privilege of making another entry, if he chose to do so. He was given the choice of accepting or declining the offer and his entry could not have lawfully been canceled unless he had accepted. The Commissioner had no authority to do so without his express consent; and having elected to make another

entry for 160 acres, it was as though his entry had not been made, his original right being restored to him in its entirety. Acceptance of the offer submitted by the Commissioner operated to reinstate him in his homestead rights *de novo*, and these rights were in no wise impaired by reason of the original entry, as no part of same had been exhausted. John S. Owen (32 L. D., 262). The decision is correct and is affirmed.

UNITED STATES MINING LAWS,  
AND REGULATIONS THEREUNDER, RELATIVE TO THE RESERVA-  
TION, EXPLORATION, LOCATION, POSSESSION, PURCHASE,  
AND PATENTING OF THE MINERAL LANDS  
IN THE PUBLIC DOMAIN.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*August 6, 1915.*

LAWS.

**TITLE XXXII, CHAPTER 6, REVISED  
STATUTES.**

Mineral Lands and Mining Resources.

SEC. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Mineral  
lands reserved.  
4 July, 1866,  
c. 166, s. 5, v.  
14, p. 86.

SEC. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Mineral  
lands open to  
purchase by  
citizens.  
10 May, 1872,  
c. 152, s. 1, v.  
17, p. 91.

SEC. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the

Length of  
mining claims  
upon veins or  
lodes.  
10 May, 1872,  
c. 152, s. 2, v.  
17, p. 91.

limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.

Proof of citizenship.

10 May, 1872,  
c. 152, s. 7, v.  
17, p. 94.

SEC. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Locators' rights of possession and enjoyment.

10 May, 1872,  
c. 152, s. 3, v.  
17, p. 91.

SEC. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Owners of tunnels, rights of.

10 May, 1872,  
c. 152, s. 4, v.  
17, p. 92.

SEC. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of

the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

SEC. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his co-owners who have made the required expenditures.

SEC. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has,

Regulations  
made by min-  
ers.

10 May, 1872,  
c. 152, s. 5, v.  
17, p. 92.

Patents for  
mineral lands,  
how obtained.

10 May, 1872,  
c. 152, s. 6, v.  
17, p. 92.

or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

**A d v e r s e**  
claim, proceed-  
ings on.

10 May, 1872,  
c. 152, s. 7, v.  
17, p. 93.

SEC. 2326.<sup>1</sup> Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty

<sup>1</sup> See also act June 7, 1910 (36 Stat. L., 459), extending the time in which to file adverse claims and institute adverse suits with respect to mineral applications in Alaska (p. 276).

days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.

SEC. 2327. The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyors-general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and surveyors-general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto.

Description  
of mining vein  
or lode claims.

10 May, 1872,  
c. 152, s. 8, v.  
17, p. 94.  
Amended  
Apr. 28, 1904  
(33 Stat., 545).

Patents to  
conform to  
official monu-  
ments.

Monuments  
to govern de-  
scriptions.

Pending applications; existing rights.

10 May, 1872, c. 152, s. 9, v. 17, p. 94.

SEC. 2328. Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the General Land-Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

Conformity of placer claims to surveys, limit of.

9 July, 1870, c. 235, s. 12, v. 16, p. 217.

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Subdivisions of ten-acre tracts; maximum of placer locations.

9 July, 1870, c. 235, s. 12, v. 16, p. 217.

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide preemption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

Conformity of placer claims to surveys, limitation of claims.

10 May, 1872, c. 152, s. 10, v. 17, p. 94.

SEC. 2331. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or preemption purposes.

What evidence of possession, &c., to establish a right to a patent.

9 July, 1870, c. 235, s. 13, v. 16, p. 217.

SEC. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this

chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

SEC. 2333. Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim and twenty-five feet of surface on each side thereof. The remainder of the placer claim or any placer claim not embracing any vein or lode claim shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

Proceedings  
for patent for  
placer claim,  
&c.

10 May, 1872,  
c. 152, s. 11, v.  
17, p. 94.

SEC. 2334. The surveyor-general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land office, which statement shall be transmitted, with the

Surveyor-  
general to ap-  
point survey-  
ors of mining  
claims, &c.

10 May, 1872,  
c. 152, s. 12, v.  
17, p. 95.

other papers in the case, to the Commissioner of the General Land Office.

Verification  
of affidavits,  
&c.

10 May, 1872,  
c. 152, s. 13, v.  
17, p. 95.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party can not be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

Where veins  
intersect, &c.

10 May, 1872,  
c. 152, s. 14, v.  
17, p. 96.

SEC. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Patents for  
nonmineral  
lands, &c.

10 May, 1872,  
c. 152, s. 15, v.  
17, p. 96.

SEC. 2337. Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

What condi-  
tions of sale  
may be made  
by local legis-  
lature.

26 July, 1866,  
c. 262, s. 5, v.  
14, p. 252.

Vested rights  
to use of water  
for mining, &c.;  
right of way  
for canals.

26 July, 1866,  
c. 262, s. 9, v.  
14, p. 253.

SEC. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

SEC. 2339. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors

and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 2340. All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

Patents, preemptions, and homesteads subject to vested and accrued water rights.

9 July, 1870,  
c. 235, s. 17, v.  
16, p. 218.

SEC. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of preemption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this Title, relating to "Homesteads."

Mineral lands in which no valuable mines are discovered open to homesteads.

26 July, 1866,  
c. 262, s. 10, v.  
14, p. 253.

SEC. 2342. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to preemption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

Mineral lands, how set apart as agricultural lands.

26 July, 1866,  
c. 262, s. 11, v.  
14, p. 253.

SEC. 2343. The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

Additional land districts and officers, power of the President to provide.

26 July, 1866,  
c. 262, s. 7, v.  
14, p. 252.

SEC. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

Provisions of this chapter not to affect certain rights.

10 May, 1872,  
c. 152, s. 16, v.  
17, p. 96.

9 July, 1870,  
c. 235, s. 17, v.  
16, p. 218.

Mineral  
lands in cer-  
tain States ex-  
cepted.

18 Feb., 1873,  
c. 159, v. 17,  
p. 465.

Grant of  
lands to States  
or corporations  
not to include  
mineral lands.

30 Jan., 1865,  
Res. No. 10, v.  
13, p. 567.

SEC. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any bona fide entries of such lands within the States named since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of preemption as other public lands.

SEC. 2346. No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

### ACTS OF CONGRESS PASSED SUBSEQUENT TO THE REVISED STATUTES.

AN ACT To amend the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two.

Claim lo-  
cated prior to  
May 10, 1872,  
first annual  
expenditure ex-  
tended to Jan.  
1, 1875.

Act of Con-  
gress approved  
June 6, 1874  
(18 Stat. L.,  
61).

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of the fifth section of the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two, which requires expenditures of labor and improvements on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the first day of January, eighteen hundred and seventy-five.

AN ACT To amend section two thousand three hundred and twenty-four of the Revised Statutes, relating to the development of the mining resources of the United States.

Money ex-  
pended in a  
tunnel consid-  
ered as expend-  
ed on the lode.

Act of Con-  
gress approved  
February 11,  
1875 (18 Stat.  
L., 315).

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section two thousand three hundred and twenty-four of the Revised Statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purpose of developing a lode or lodes, owned by said person or company, the money so

expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.

**AN ACT** To exclude the States of Missouri and Kansas from the provisions of the act of Congress entitled "An act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That within the States of Missouri and Kansas deposits of coal, iron, lead, or other mineral be, and they are hereby, excluded from the operation of the act entitled "An act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two, and all lands in said States shall be subject to disposal as agricultural lands.

Missouri and Kansas excluded from the operation of the mineral laws.

Act of Congress approved May 5, 1876 (19 Stat. L., 52).

**AN ACT** Authorizing the citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all citizens of the United States and other persons, bona fide residents of the State of Colorado, or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided*, The provisions of this act shall not extend to railroad corporations.

Citizens of Colorado, Nevada, and the Territories authorized to fell and remove timber on the public domain for mining and domestic purposes.

Act of Congress approved June 3, 1878 (20 Stat. L., 88).

**SEC. 2.** That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and, if so, they shall immediately notify the Commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid

and allowed such register and receiver in making up their next quarterly accounts.

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

AN ACT To amend sections twenty-three hundred and twenty-four and twenty-three hundred and twenty-five of the Revised Statutes of the United States concerning mineral lands.

Application for patent may be made by authorized agent.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section twenty-three hundred and twenty-five of the Revised Statutes of the United States be amended by adding thereto the following words: "*Provided*, That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits: *And provided*, That this section shall apply to all applications now pending for patents to mineral lands."

On unpatented claims period commences on Jan. 1 succeeding date of location.

Act of Congress approved Jan. 22, 1880 (21 Stat. L., 61).

SEC. 2. That section twenty-three hundred and twenty-four of the Revised Statutes of the United States be amended by adding the following words: "*Provided*, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two."

AN ACT To amend section twenty-three hundred and twenty-six of the Revised Statutes relating to suits at law affecting the title to mining claims.

In action brought title not established in either party.

Act of Congress approved Mar. 3, 1881 (21 Stat. L., 505).

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if, in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title.

AN ACT To amend section twenty-three hundred and twenty-six of the Revised Statutes in regard to mineral lands, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the adverse claim required by section twenty-three hundred and twenty-six of the Revised Statutes may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or the State or Territory where the adverse claimant may then be, or before any notary public of such State or Territory.

Adverse claim may be verified by agent.

Sec. 1, act of Congress approved Apr. 26, 1882 (22 Stat. L., 49).

SEC. 2. That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record, or before any notary public of any State or Territory.

Affidavit of citizenship; before whom made.

Sec. 2, act of Congress approved Apr. 26, 1882 (22 Stat. L., 49).

AN ACT To exclude the public lands in Alabama from the operation of the laws relating to mineral lands.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That within the State of Alabama all public lands, whether mineral or otherwise, shall be subject to disposal only as agricultural lands: *Provided, however,* That all lands which have heretofore been reported to the General Land Office as containing coal and iron shall first be offered at public sale: *And provided further,* That any bona fide entry under the provisions of the homestead law of lands within said State heretofore made may be patented without reference to an act approved May tenth, eighteen hundred and seventy-two, entitled "An act to promote the development of the mining resources of the United States," in cases where the persons making application for such patents have in all other respects complied with the homestead law relating thereto.

Alabama excepted from the operation of the mineral laws.

Act of Congress approved Mar. 3, 1883 (22 Stat. L., 487).

AN ACT Providing a civil government for Alaska.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

\* \* \* \* \*

SEC. 8. That the said district of Alaska is hereby created a land district, and a United States land office for said district is hereby located at Sitka. The commissioner provided for by this act to reside at Sitka shall be ex officio register of said land office, and the clerk provided for by this act shall be ex officio receiver of public

Mining laws extended to the district of Alaska.

Act of Congress approved May 17, 1884 (23 Stat. L., 24).

moneys, and the marshal provided for by this act shall be ex-officio surveyor-general of said district and the laws of the United States relating to mining claims, and the rights incident thereto shall, from and after the passage of this act, be in full force and effect in said district, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President: *Provided*, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: *And provided further*, That parties who have located mines or mineral privileges therein under the laws of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claims, shall not be disturbed therein, but shall be allowed to perfect their title to such claims by payment as aforesaid: *And provided also*, That the land not exceeding six hundred and forty acres at any station now occupied as missionary stations among the Indian tribes in said section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which said missionary stations respectively belong until action by Congress. But nothing contained in this act shall be construed to put in force in said district the general land laws of the United States.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

\* \* \* \* \*

Right of entry under all the land laws restricted to 320 acres. (Repealed, see act Mar. 3, 1891, sec. 17).  
Reservation in patents for right of way for ditches and canals constructed.

Act of Congress approved Aug. 30, 1890 (26 Stat. L., 371).

No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act: *Provided*, That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act west of the one hundredth meridian it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States. \* \* \*

AN ACT To repeal the timber-culture laws, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

\* \* \* \* \*

SEC. 16. That town-site entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such town sites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: *Provided*, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

Town sites on mineral lands authorized. Lands entered under the mineral laws not included in restriction to 320 acres. Act of Congress approved Mar. 3, 1891 (26 Stat. L., 1095).

SEC. 17. That reservoir sites located or selected and to be located and selected under the provisions of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs, excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs, and that the provisions of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not include lands entered or sought to be entered under mineral land laws.

\* \* \* \* \*

**AN ACT** To authorize the entry of lands chiefly valuable for building stone under the placer mining laws.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer-mineral claims: *Provided*, That lands reserved for the benefit of the public schools or donated to any State shall not be subject to entry under this act.

Entry of lands chiefly valuable for building stone under the placer-mining laws.

Act of Congress approved Aug. 4, 1892 (27 Stat. L., 348).

**AN ACT** To amend section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States relating to mining claims.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States, which require that on each claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, be suspended for the year eighteen hundred and ninety-three, so that no mining claim which has been regularly located and recorded as required by the local laws and mining regulations shall be subject to forfeiture for non-performance of the annual assessment for the year eighteen hundred and ninety-three: *Provided*, That the claimant or claimants of any mining location, in order to secure the benefits of this act shall cause to be recorded in the office where the location notice or certificate is filed on or before December thirty-first, eighteen hundred and ninety-three, a notice that he or they, in good faith intend to hold and work said claim: *Provided, however*, That the provisions of this act shall not apply to the State of South Dakota.

Requirement of proof of expenditure for the year 1893 suspended except as to South Dakota.

Act of Congress approved Nov. 3, 1893 (28 Stat. L., 6).

This act shall take effect from and after its passage.

**AN ACT** To amend section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States relating to mining claims.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States, which require that on each claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, be

Requirement of proof of expenditure for the year 1894 suspended except as to South Dakota.

Act of Congress approved July 18, 1894 (28 Stat. L., 114).

suspended for the year eighteen hundred and ninety-four, so that no mining claim which has been regularly located and recorded as required by the local laws and mining regulations shall be subject to forfeiture for non-performance of the annual assessment for the year eighteen hundred and ninety-four: *Provided*, That the claimant or claimants of any mining location, in order to secure the benefits of this act, shall cause to be recorded in the office where the location notice or certificate is filed on or before December thirty-first, eighteen hundred and ninety-four, a notice that he or they in good faith intend to hold and work said claim: *Provided, however*, That the provisions of this act shall not apply to the State of South Dakota.

SEC. 2. That this act shall take effect from and after its passage.

AN ACT Making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-six, and for other purposes.

[WICHITA LANDS, OKLAHOMA.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

\* \* \* \* \*

The said Wichita and affiliated bands of Indians in the Indian Territory hereby cede, convey, transfer, relinquish, forever and absolutely, without any reservation whatever, all their claim, title and interest of every kind and character in and to the lands embraced in the following-described tract of country in the Indian Territory, to wit:

Lands ceded
Act of Mar.
2, 1895 (28
Stat. L., 876,
894, 899).

Commencing at a point in the middle of the main channel of the Washita River, where the ninety-eighth meridian of west longitude crosses the same, thence up the middle of the main channel of said river to the line of ninety-eight degrees forty minutes west longitude, thence on said line of ninety-eight degrees forty minutes due north to the middle of the channel of the main Canadian River, thence down the middle of said main Canadian River to where it crosses the ninety-eighth meridian, thence due south to the place of beginning.

\* \* \* \* \*

That the laws relating to the mineral lands of the United States are hereby extended over the lands ceded by the foregoing agreement.

Mineral
laws.

AN ACT Making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and for other purposes.

\* \* \* \*

[FORT BELKNAP INDIAN RESERVATION, MONTANA.]

### SEC. 8.

\* \* \* \*

*Provisos.*  
Price.  
No occupancy  
prior to open-  
ing.

That upon the filing in the United States local land office for the district in which the lands surrendered by article one of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be open to occupation, location, and purchase, under the provisions of the mineral-land laws only, subject to the several articles of the foregoing agreement: *Provided*, That said lands shall be sold at ten dollars per acre: *And provided further*, That the terms of this section shall not be construed to authorize the occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey. \* \* \*

[BLACKFEET INDIAN RESERVATION, MONTANA.]

### SEC. 9.

\* \* \* \*

*Proviso.*  
No occupancy  
prior to open-  
ing.

That upon the filing in the United States local land office for the district in which the lands surrendered by article one of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be opened to occupation, location, and purchase under the provisions of the mineral-land laws only, subject to the several articles of the foregoing agreement: *Provided*, That the terms of this section shall not be construed to authorize occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey.

[SAN CARLOS INDIAN RESERVATION, ARIZONA.]

### SEC. 10.

\* \* \* \*

*Provisos.*  
No occupancy  
prior to open-  
ing.

Preference to  
discoverers of  
coal, etc.

That upon the filing in the United States local land office for the district in which the lands surrendered by article one of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be opened to occupation, location, and purchase under the provisions of the mineral-land laws only, subject to the several articles of the foregoing agreement: *Provided*, That the terms of this section shall not be construed to authorize occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey: *Provided, however*, That any person who in good faith prior to the passage of this

act had discovered and opened, or located, a mine of coal or other mineral, shall have a preference right of purchase for ninety days from and after the official filing in the local land office of the approved plat of survey provided for by this section.

Act of Congress approved June 10, 1896 (29 Stat. L., 353, 357, 360).

AN ACT To authorize the entry and patenting of lands containing petroleum and other mineral oils under the placer mining laws of the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims: *Provided,* That lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed, or improved as mineral, but not yet patented, may be held and patented under the provisions of this act the same as if such filing, claim, or improvement were subsequent to the date of the passage hereof.

Entry and patenting of lands containing petroleum and other mineral oils under the placer mining laws.

Act of Congress approved Feb. 11, 1897 (29 Stat. L., 526).

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes.

\* \* \* \* \*

All public lands heretofore designated and reserved by the President of the United States under the provisions of the act approved March third, eighteen hundred and ninety-one, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said act, shall be as far as practicable controlled and administered in accordance with the following provisions:

Act of Congress approved June 4, 1897 (30 Stat. L., 34, 35, 36).

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

Forest reservations, when to be established.

\* \* \* \* \*

The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, pros-

Use of timber, etc., by settlers, etc.

pecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

Egress and ingress of settlers within reservations, etc.

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations.

\* \* \* \* \*

Restoration of mineral or agricultural lands to the public domain.

Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the State or Territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained.

AN ACT Extending the homestead laws and providing for right of way for railroads in the district of Alaska, and for other purposes.

\* \* \* \* \*

Mining rights in Alaska to native-born citizens of the Dominion of Canada.

Act of Congress approved May 14, 1898 (30 Stat. L., 415).

SEC. 13. That native-born citizens of the Dominion of Canada shall be accorded in said district of Alaska the same mining rights and privileges accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada or the local laws, rules, and regulations; but no greater rights shall be thus accorded than citizens of the United States, or persons who have declared their intention to become such, may enjoy in said district of Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect.

AN ACT Making further provisions for a civil government for Alaska,  
and for other purposes.

\* \* \* \* \*

SEC. 15. The respective recorders shall, upon the payment of the fees for the same prescribed by the Attorney-General, record separately, in large and well-bound separate books, in fair hand:

What record-  
ed.  
Act of Congress approved  
June 6, 1900  
(31 Stat. L.,  
321, 326, 330).

First. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney, leases which have been acknowledged or proved, mortgages upon personal property;

\* \* \* \* \*

Ninth. Affidavits of annual work done on mining claims;

Tenth. Notices of mining location and declaratory statements;

Eleventh. Such other writings as are required or permitted by law to be recorded, including the liens of mechanics, laborers, and others: *Provided*, Notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject-matter affected by the instrument is situated, and where the property or subject-matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject-matter is situated.

*Proviso.*  
Mining  
claims.

Where in-  
struments re-  
corded.

\* \* \* \* \*

\* \* \* *Provided*, Miners in any organized mining district may make rules and regulations governing the recording of notices of location of mining claims, water rights, flumes and ditches, mill sites and affidavits of labor, not in conflict with this act or the general laws of the United States; and nothing in this act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the court from electing their own mining recorder to act as such until a recorder therefor is appointed by the court: *Provided further*, All records heretofore regularly made by the United States commissioner at Dyea, Skagway, and the recorder at Douglas City, not in conflict with any records regularly made with the United States commissioner at Juneau, are hereby legalized. And all records heretofore made in good faith in any regularly organized mining district are hereby made public records, and the same shall be delivered to the recorder for the recording district including such mining district within six months from the passage of this act.

*Proviso.*  
Miners' reg-  
ulations for  
recording, etc.  
—recorder.

Records at  
Dyea, etc., le-  
galized.

Mining laws. SEC. 26. The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are hereby extended to the district of Alaska: *Provided*, That subject only to such general limitations as may be necessary to exempt navigation from artificial obstructions all land and shoal water between low and mean high tide on the shores, bays, and inlets of Bering Sea, within the jurisdiction of the United States, shall be subject to exploration and mining for gold and other precious metals by citizens of the United States, or persons who have legally declared their intentions to become such, under such reasonable rules and regulations as the miners in organized mining districts may have heretofore made or may hereafter make governing the temporary possession thereof for exploration and mining purposes until otherwise provided by law: *Provided further*, That the rules and regulations established by the miners shall not be in conflict with the mining laws of the United States; and no exclusive permits shall be granted by the Secretary of War authorizing any person or persons, corporation, or company to excavate or mine under any of said waters below low tide, and if such exclusive permit has been granted it is hereby revoked and declared null and void; but citizens of the United States or persons who have legally declared their intention to become such shall have the right to dredge and mine for gold or other precious metals in said waters, below low tide, subject to such general rules and regulations as the Secretary of War may prescribe for the preservation of order and the protection of the interests of commerce; such rules and regulations shall not, however, deprive miners on the beach of the right hereby given to dump tailings into or pump from the sea opposite their claims, except where such dumping would actually obstruct navigation; and the reservation of a roadway sixty feet wide, under the tenth section of the act of May fourteenth, eighteen hundred and ninety-eight, entitled "An act extending the homestead laws and providing for right of way for railroads in the district of Alaska, and for other purposes," shall not apply to mineral lands or town sites.

*Provisos.*  
 Gold, etc. Ex-  
 plorations on  
 Bering Sea.

—miners' regu-  
 lations.

—not to con-  
 flict with Fed-  
 eral laws.

Exclusive per-  
 mits to mine  
 void, etc.

Provision re-  
 serving road-  
 way, etc., not  
 to apply. Vol.  
 30, p. 413.

Act of Con- AN ACT To ratify an agreement with the Indians of the Fort Hall  
 gress approved June 6, 1900 Indian Reservation in Idaho, and making appropriations to carry  
 (31 Stat. L., the same into effect.  
 672, 676, 680).

SEC. 5. That on the completion of the allotments and the preparation of the schedule provided for in the preceding section, and the classification of the lands as provided for herein, the residue of said ceded lands shall be opened to settlement by the proclamation of the President, and shall be subject to disposal under the homestead, town site, stone and timber, and mining laws of the United States only, excepting as to price and excepting the sixteenth and thirty-sixth sections in each congressional

(32 Stat. L.,  
 1997.)

township, which shall be reserved for common-school purposes and be subject to the laws of Idaho, etc. \* \* \* *And provided further*, That all of said lands within five miles of the boundary line of the town of Pocatello shall be sold at public auction, payable as aforesaid, under the direction of the Secretary of the Interior for not less than ten dollars per acre: *And provided further*, That any mineral lands within said five-mile limit shall be disposed of under the mineral-land laws of the United States, excepting that the price of such mineral lands shall be fixed at ten dollars per acre instead of the price fixed by the said mineral-land laws.

See also act of Congress approved Mar. 30, 1904 (33 Stat. L., 153).

[DISPOSITION OF COMANCHE, KIOWA, AND APACHE LANDS.]

\* \* \* \* \*  
SEC. 6. That should any of said lands allotted to said Indians or opened to settlement under this act contain valuable mineral deposits, such mineral deposits shall be open to location and entry, under the existing mining laws of the United States, upon the passage of this act, and the mineral laws of the United States are hereby extended over said lands.

Act of Congress approved June 6, 1900 (31 Stat. L., 680).

AN ACT Extending the mining laws to saline lands.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all unoccupied public lands of the United States containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, are hereby declared to be subject to location and purchase under the provisions of the law relating to placer-mining claims: *Provided*, That the same person shall not locate or enter more than one claim hereunder.

Mining laws extended to saline lands. Act of Congress approved Jan. 31, 1901 (31 Stat. L., 745).

AN ACT Making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*,

\* \* \* \* \*  
That the Secretary of the Interior, with the consent thereto of the majority of the adult male Indians of the Uintah and the White River tribes of Ute Indians, to be ascertained as soon as practicable by an inspector, shall cause to be allotted to each head of a family eighty acres of agricultural land which can be irrigated and forty acres of such land to each other member of said tribes, said allotments to be made prior to October first, nine-

Uintah and White River Utes. Allotment of irrigable land.

Unallotted lands restored to public domain. *Providos.* Homestead entries.

Mineral leases.

Raven Mining Company.

Application of proceeds from sales.

Act of Congress approved May 27, 1902 (32 Stat. L., 263).

Assessment required for oil mining claims.

Act of Congress approved Feb. 12, 1903 (32 Stat. L., 825).

Uncompahgre Indian Reservation.

teen hundred and three, on which date all the unallotted lands within said reservation shall be restored to the public domain: *Provided*, That persons entering any of said land under the homestead law shall pay therefor at the rate of one dollar and twenty-five cents per acre: *And provided further*, That nothing herein contained shall impair the rights of any mineral lease which has been approved by the Secretary of the Interior, or any permit heretofore issued by direction of the Secretary of the Interior to negotiate with said Indians for a mineral lease; but any person or company having so obtained such approved mineral lease or such permit to negotiate with said Indians for a mineral lease on said reservation, pending such time and up to thirty days before said lands are restored to the public domain as aforesaid, shall have in lieu of such lease or permit the preferential right to locate under the mining laws not to exceed six hundred and forty acres of contiguous mineral land, except the Raven Mining Company, which may in lieu of its lease locate one hundred mining claims of the character of mineral mentioned in its lease; and the proceeds of the sale of the lands so restored to the public domain shall be applied, first, to the reimbursement of the United States for any moneys advanced to said Indians to carry into effect the foregoing provisions; and the remainder, under the direction of the Secretary of the Interior, shall be used for the benefit of said Indians.

\* \* \* \* \*

AN ACT Defining what shall constitute and providing for assessments on oil mining claims.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all: *Provided*, That said labor will tend to the development or to determine the oil-bearing character of such contiguous claims.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*,

\* \* \* \* \*

That in the lands within the former Uncompahgre Indian Reservation, in the State of Utah, containing gilson-

ite, asphaltum, elaterite, or other like substances, which were reserved from location and entry by provision in the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," approved June seventh, eighteen hundred and ninety-seven; all discoveries and locations of any such mineral lands by qualified persons prior to January first, eighteen hundred and ninety-one, not previously discovered and located, who recorded notices of such discoveries and locations prior to January first, eighteen hundred and ninety-one, either in the State of Colorado, or in the office of the county recorder of Uintah County, Utah, shall have all the force and effect accorded by law to locations of mining claims upon the public domain. All such locations may hereafter be perfected, and patents shall be issued therefor upon compliance with the requirements of the mineral-land laws, provided that the owners of such locations shall relocate their respective claims and record the same in the office of the county recorder of Uintah County, Utah, within ninety days after the passage of this act. All locations of any such mineral lands made and recorded on or subsequent to January first, eighteen hundred and ninety-one, are hereby declared to be null and void; and the remainder of the lands heretofore reserved as aforesaid because of the mineral substances contained in them, in so far as the same may be within even-numbered sections, shall be sold and disposed of in tracts not exceeding forty acres, or a quarter of a quarter of a section, in such manner and upon such terms and with such restrictions as may be prescribed in a proclamation of the President of the United States issued for that purpose not less than one hundred and twenty days after the passage of this act, and not less than ninety days before the time of sale or disposal, and the balance of said lands and also all the mineral therein are hereby specifically reserved for future action of Congress.

Mining claims located on prior to Jan. 1, 1891, valid.

30 Stat., p. 87.

Patents to issue on relocations, etc., of claims.

Claims located after Jan. 1, 1891, invalid.

Sale of remainder of mineral lands.

Restrictions.

Act of Congress approved Mar. 3, 1903 (32 Stat. L., 998).

AN ACT For the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment.

Sec. 5. That said commissioners shall then proceed to personally inspect and classify and appraise, by the smallest legal subdivisions of forty acres each, all of the remaining lands embraced within said reservation. In making such classification and appraisalment said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, timber lands, the same to be

Classification, etc., of lands.

lands more valuable for their timber than for any other purpose; fourth, mineral lands; and fifth, grazing lands.

\* \* \* \*

Disposal of lands. SEC. 8. That when said commission shall have completed the classification and appraisement of all of said lands and the same shall have been approved by the Secretary of the Interior, the land shall be disposed of under the provisions of the homestead, mineral, and town-site laws of the United States, except such of said lands as shall have been classified as timber lands, and excepting sections sixteen and thirty-six of each township, which are hereby granted to the State of Montana for school purposes. \* \* \*

Timber and school lands excepted.

\* \* \* \*

Mineral land entries. SEC. 10. That only mineral entry may be made on such of said lands as said commission shall designate and classify as mineral under the general provisions of the mining laws of the United States, and mineral entry may also be made on any of said lands whether designated by said commission as mineral lands or otherwise, such classification by said commission being only prima facie evidence of the mineral or nonmineral character of the same: *Provided*, That no such mineral locations shall be permitted upon any lands allotted in severalty to an Indian.

*Proviso.*  
Exceptions.  
Act of Congress approved Apr. 23, 1904 (33 Stat. L., 302).

AN ACT To ratify and amend an agreement with the Indians of the Crow Reservation, in Montana, and making appropriations to carry the same into effect.

\* \* \* \*

Town-site and mineral lands. SEC. 5. \* \* \* *And provided further*, That the price of said lands shall be four dollars per acre, when entered under the homestead laws. \* \* \* Lands entered under the town-site and mineral land laws shall be paid for in amount and manner as provided by said laws, but in no event at a less price than that fixed herein for such lands, if entered under the homestead laws. \* \* \*

Act of Congress approved Apr. 27, 1904 (33 Stat. L., 352).

AN ACT To authorize the sale and disposition of surplus or unallotted lands of the Yakima Indian Reservation, in the State of Washington.

\* \* \* \*

Appraisal of unallotted lands, etc. SEC. 3. That the residue of the lands of said reservation—that is, the lands not allotted and not reserved—shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timber lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the mineral lands, which need not be appraised, and the timber on the lands classified as timber lands shall be appraised separately from the land. The basis for the appraisal of the timber shall be the amount of

standing merchantable timber thereon, which shall be ascertained and reported.

\* \* \* \* \*

The lands classified as mineral lands shall be subject to location and disposal under the mineral-land laws of the United States: *Provided*, That lands not classified as mineral may also be located and entered as mineral lands, subject to approval by the Secretary of the Interior and conditioned upon the payment, within one year from the date when located, of the appraised value of the lands per acre fixed prior to the date of such location, but at not less than the price fixed by existing law for mineral lands: *Provided further*, That no such mineral locations shall be permitted on any lands allotted to Indians in severalty or reserved for any purpose as herein authorized.

Mineral lands.

*Provisos.*  
Lands not classified as mineral lands.

Restriction.

Act of Congress approved Dec. 21, 1904 (33 Stat. L., 595).

AN ACT To ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation in the State of Wyoming and to make appropriations for carrying the same into effect.

\* \* \* \* \*

SEC. 2. That the lands ceded to the United States under the said agreement shall be disposed of under the provisions of the homestead, town-site, coal, and mineral land laws of the United States and shall be opened to settlement and entry by proclamation of the President.

Opening of lands to entry.

Proclamation.

\* \* \* \* \*

\* \* \* Lands entered under the town-site, coal, and mineral land laws shall be paid for in amount and manner as provided by said laws. Notice of location of all mineral entries shall be filed in the local land office of the district in which the lands covered by the location are situated, and unless entry and payment shall be made within three years from the date of location all rights thereunder shall cease; \* \* \* that all lands, except mineral and coal lands, herein ceded remaining undisposed of at the expiration of five years from the opening of said lands to entry shall be sold to the highest bidder for cash at not less than one dollar per acre under rules and regulations to be prescribed by the Secretary of the Interior.

Town-site, coal, and mineral entries.

Act of Congress approved Mar. 3, 1905 (33 Stat. L., 1016).

AN ACT To authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes.

\* \* \* \* \*

SEC. 3. That upon the completion of said allotments to said Indians the residue or surplus lands—that is, lands not allotted or reserved for Indian school, agency, or other purposes—of the said diminished Colville Indian Reservation shall be classified under the direction of the

Mineral lands.

Act of Congress approved Mar. 22, 1906.

Secretary of the Interior as irrigable lands, grazing lands, timber lands, mineral lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the lands classed as mineral lands, which need not be appraised, and which shall be disposed of under the general mining laws of the United States.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven.

[COEUR D'ALENE INDIAN LANDS.]

\* \* \* \* \*

Mineral lands. Act of Congress approved June 21, 1906 (34 Stat. L., 336). Coal and oil deposits reserved.

*Provided further*, That the general mining laws of the United States shall extend after the approval of this act to any of said lands, and mineral entry may be made on any of said lands, but no such mineral selection shall be permitted upon any lands allotted in severalty to the Indians: *Provided further*, That all the coal or oil deposits in or under the lands on the said reservation shall be and remain the property of the United States, and no patent that may be issued under the provisions of this or any other act of Congress shall convey any title thereto. \* \* \*

Act of Congress approved Mar. 2, 1907 (35 Stat. L., 1243).

AN ACT To amend the laws governing labor or improvements upon mining claims in Alaska.

Alaska. Annual improvements, etc., required on mining claims.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That during each year and until patent has been issued therefor, at least one hundred dollars' worth of labor shall be performed or improvements made on, or for the benefit or development of, in accordance with existing law, each mining claim in the district of Alaska heretofore or hereafter located. And the locator or owner of such claim or some other person having knowledge of the facts may also make and file with the said recorder of the district in which the claims shall be situate an affidavit showing the performance of labor or making of improvements to the amount of one hundred dollars as aforesaid and specifying the character and extent of such work. Such affidavit shall set forth the following: First, the name or number of the mining claims and where situated; second, the number of days' work done and the character and value of the improvements placed thereon; third, the date of the performance of such labor and of making improvements; fourth, at whose instance the work was done or the improvements made; fifth, the actual amount paid for work and improvement, and by whom paid when the same was not done by the owner. Such affidavit shall be prima facie evidence of the performance of such work or making of such improvements, but if such affidavits be not filed within the time fixed by

Filing affidavits.

Contents.

Prima facie evidence of performance of work, etc.

this act the burden of proof shall be upon the claimant to establish the performance of such annual work and improvements. And upon failure of the locator or owner of any such claim to comply with the provisions of this act, as to performance of work and improvements, such claim shall become forfeited and open to location by others as if no location of the same had ever been made. The affidavits required hereby may be made before any officer authorized to administer oaths, and the provisions of sections fifty-three hundred and ninety-two and fifty-three hundred and ninety-three of the Revised Statutes are hereby extended to such affidavits. Said affidavits shall be filed not later than ninety days after the close of the year in which such work is performed.

Forfeiture.

Officer before whom affidavits may be made.

R. S., secs. 5392, 5393, p. 1045.

Time of filing.

Fee.

SEC. 2. That the recorders for the several divisions or districts of Alaska shall collect the sum of one dollar and fifty cents as a fee for the filing, recording, and indexing said annual proofs of work and improvements for each claim so recorded.

AN ACT Authorizing a resurvey of certain townships in the State of Wyoming, and for other purposes.

[BITTER ROOT VALLEY, MONTANA.]

SEC. 11. That all the provisions of the mining laws of the United States are hereby extended and made applicable to the undisposed-of lands in the Bitter Root Valley, State of Montana, above the mouth of the Lo Lo Fork of the Bitter Root River, designated in the act of June fifth, eighteen hundred and seventy-two: *Provided*, That all mining locations and entries heretofore made or attempted to be made upon said lands shall be determined by the Department of the Interior as if said lands had been subject to mineral location and entry at the time such locations and entries were made or attempted to be made: *And provided further*, That this act shall not be applicable to lands withdrawn for administration sites for use of the Forest Service.

Mining laws extended to lands.

Act of Congress approved May 29, 1908 (35 Stat. L., 467).

AN ACT For relief of applicants for mineral surveys.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of the moneys heretofore or hereafter covered into the Treasury from deposits made by individuals to cover cost of work performed and to be performed in the offices of the United States surveyors general in connection with the survey of mineral lands, any excess in the amount deposited over and above the actual cost of the work performed, including all expenses incident thereto for which the deposits were severally made or the whole of any unused deposit; and such sums, as the several cases may be, shall be deemed to be annually and permanently appropriated for

Repayment of deposits for mineral surveys.

Act of Congress approved Feb. 24, 1909 (35 Stat. L., 645).

that purpose. Such repayments shall be made to the person or persons who made the several deposits, or to his or their legal representatives, after the completion or abandonment of the work for which the deposits were made, and upon an account certified by the surveyor general of the district in which the mineral land surveyed, or sought to be surveyed, is situated and approved by the Commissioner of the General Land Office.

**AN ACT** Extending the time for final entry of mineral claims within the Shoshone or Wind River Reservation in Wyoming.

Time ex-  
tended for mak-  
ing entry.  
Act of Con-  
gress approved  
Feb. 25, 1909  
(35 Stat. L.,  
650).

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section two of chapter fourteen hundred and fifty-two of the Statutes of the Fifty-eighth Congress (United States Statutes at Large, volume thirty-three, part one), being "An act to ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation, in the State of Wyoming, and to make appropriations to carry the same into effect," be, and the same is hereby, amended so that all claimants and locators of mineral lands within the ceded portion of said reservation shall have five years from the date of location within which to make entry and payment instead of three years, as now provided by the said act.

**AN ACT** Extending the time in which to file adverse claims and institute adverse suits against mineral entries in the District of Alaska.

Time ex-  
tended for fil-  
ing adverse  
mineral claims,  
etc., in Alaska.  
(U. S. secs.  
2325, 2326, pp.  
426, 427.)  
Act of Con-  
gress approved  
June 7, 1910  
(36 Stat. L.,  
459).

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in the District of Alaska adverse claims authorized and provided for in sections twenty-three hundred and twenty-five and twenty-three hundred and twenty-six, United States Revised Statutes, may be filed at any time during the sixty days' period of publication or within eight months thereafter, and the adverse suits authorized and provided for in section twenty-three hundred and twenty-six, United States Revised Statutes, may be instituted at any time within sixty days after the filing of said claims in the local land office.

**AN ACT** To authorize the President of the United States to make withdrawals of public lands in certain cases.

Temporary  
withdrawals by  
President for  
power sites, ir-  
rigation, etc.,  
authorized.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including the District of Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reserva-

tions shall remain in force until revoked by him or by an act of Congress.

SEC. 2.<sup>1</sup> That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates: *Provided*, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: *And provided further*, That this act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this act: *And provided further*, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: *And provided further*, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress.

Mining rights continued.

Exceptions.

Provisos.

Rights of bona fide oil or gas claimants.

Status of prior claims.

Homestead, etc., settlements excepted.

Restriction on new forest reserves.

Report of withdrawals to Congress.

Act of Congress approved June 25, 1910 (36 Stat. L., 847).

SEC. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

AN ACT To protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person, or corporation, prior to discovery of oil or gas therein, but if such claim is in all

Locators of mineral oil lands.

Patents not to be denied, solely for transfer before discovery, etc.

<sup>1</sup> Sec. 2 amended by act of Aug. 24, 1912, to permit exploration, location, and purchase of lands containing metalliferous minerals only. See pp. 278-279.

*Proviso.*  
Condition.  
Act of Con-  
gress approved  
Mar. 2, 1911  
(38 Stat. L.,  
1015).

other respects valid and regular, patent therefor not exceeding one hundred and sixty acres in any one claim shall issue to the holder or holders thereof, as in other cases: *Provided, however,* That such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry.<sup>1</sup>

AN ACT To modify and amend the mining laws in their application to the Territory of Alaska, and for other purposes.

Alaska.

Association  
placer-mining  
claims limited.  
Assessment  
required.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no association placer-mining claim shall hereafter be located in Alaska in excess of forty acres, and on every placer-mining claim hereafter located in Alaska, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, including the year of location, for each and every twenty acres or excess fraction thereof.

Location by  
attorneys.

Restriction.

SEC. 2. That no person shall hereafter locate any placer-mining claim in Alaska as attorney for another unless he is duly authorized thereto by a power of attorney in writing, duly acknowledged and recorded in any recorder's office in the judicial division where the location is made. Any person so authorized may locate placer-mining claims for not more than two individuals or one association under such power of attorney, but no such agent or attorney shall be authorized or permitted to locate more than two placer-mining claims for any one principal or association during any calendar month, and no placer-mining claim shall hereafter be located in Alaska except under the limitations of this act.

Number of  
locations limit-  
ed.

*Proviso.*  
Ownership.

SEC. 3. That no person shall hereafter locate, cause or procure to be located, for himself more than two placer-mining claims in any calendar month: *Provided,* That one or both of such locations may be included in an association claim.

Area of  
claims.

SEC. 4. That no placer-mining claim hereafter located in Alaska shall be patented which shall contain a greater area than is fixed by law, nor which is longer than three times its greatest width.

Effect of vio-  
lations.

Act of Con-  
gress approved  
Aug. 1, 1912  
(37 Stat. L.,  
242, 243).

SEC. 5. That any placer-mining claim attempted to be located in violation of this act shall be null and void, and the whole area thereof may be located by any qualified locator as if no such prior attempt had been made.

Withdrawals  
for specified  
purposes.  
Vol. 36, p.  
847.

AN ACT To amend section two of an act to authorize the President of the United States to make withdrawals of public lands in certain cases, approved June twenty-fifth, nineteen hundred and ten.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section two of the act of Congress approved

<sup>1</sup> Act amended by act of Aug. 25, 1914 (38 Stat. L., 708); by adding another section thereto, permitting agreements with Government for working certain oil or gas lands prior to issue of patents. (See pp. 281-282.)

June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and forty-seven), be, and the same hereby is, amended to read as follows:

"SEC. 2. That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals: *Provided*, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands and who, at such date, is in the diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant or claimant shall continue in diligent prosecution of said work: *Provided further*, That this act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to June twenty-fifth, nineteen hundred and ten: *And provided further*, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: *And provided further*, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of California, Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress."

Mining rights continued.

*Provisos.*  
Rights of bona fide oil or gas claimants.

Status of prior claims.

Homestead, etc., entries not affected.

Creation of forest reserves restricted.  
Vol. 34, p. 1271.

Act of Congress approved Aug. 24, 1912 (37 Stat. L., 497).

AN ACT To amend section twenty-three hundred and twenty-four of the Revised Statutes of the United States relating to mining claims.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the provision of section twenty-three hundred and twenty-four of the Revised Statutes of the United States, which requires that on each claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year, be suspended for the year nineteen hundred and thirteen as to mining claims situated on Seward Peninsular, in the district or Territory of Alaska west of longitude one hundred and fifty-eight west and north of latitude sixty-four, so that no mining claim which has been regularly located and recorded as

Alaska.  
Assessment work on mining claims, Seward Peninsula, remitted for 1913.  
(R. S., sec. 2324, p. 426.)

*Proviso.*  
Notice re-  
quired.

Limited to  
specified area.

Act of Con-  
gress approved  
Dec. 1, 1913  
(38 Stat. L.,  
235).

required by the local laws and mining regulations within such area so described shall be subject to forfeiture for nonperformance of the annual assessment for the year nineteen hundred and thirteen: *Provided*, That the claimant or claimants of any mining location in order to secure the benefits of this Act shall cause to be recorded in the office where the location notice and certificate is filed on or before December thirty-first, nineteen hundred and thirteen, a notice that he, she, or they in good faith intend to hold or work said claim: *And provided further*, That this amendment shall in no way annul, modify, or repeal said section as to any mining claims, either in the district of Alaska or elsewhere, except those said mining claims within the area herein particularly described.

AN ACT To provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals.

Entry of  
classified non-  
metallic min-  
eral lands for  
agriculture, etc.

Mining re-  
served.

Desert en-  
tries.

*Proviso.*  
Condition in  
application.

Issue of con-  
ditional pat-  
ent.

Bond for  
prospecting.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits, shall be subject to appropriation, location, selection, entry, or purchase, if otherwise available, under the nonmineral land laws of the United States, whenever such location, selection, entry, or purchase shall be made with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same; but no desert entry made under the provisions of this act shall contain more than one hundred and sixty acres: *Provided*, That all applications to locate, select, enter, or purchase under this section shall state that the same are made in accordance with and subject to the provisions and reservations of this act.

Sec. 2. That upon satisfactory proof of full compliance with the provisions of the laws under which the location, selection, entry, or purchase is made, the locator, selector, entryman, or purchaser shall be entitled to a patent to the land located, selected, entered, or purchased, which patent shall contain a reservation to the United States of the deposits on account of which the lands so patented were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same, such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the pay-

ment of all damages to the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom, and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, select, enter, or purchase, under the land laws of the United States, lands which have been withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic mineral lands, with a view of disproving such classification and securing patent without reservation, nor shall persons who have located, selected, entered, or purchased lands subsequently withdrawn, or classified as valuable for said mineral deposits, be debarred from the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands entered, selected, or located are in fact nonmineral in character.

Mining entries permitted.

*Proviso.*  
Application to disprove mineral classification.

For subsequent withdrawals.

Conditional nonmineral patents for lands subsequently withdrawn, etc.

Reservation for mining.

Act of Congress approved July 17, 1914 (38 Stat. L., 509).

SEC. 3. That any person who has, in good faith, located, selected, entered, or purchased, or any person who shall hereafter locate, select, enter, or purchase, under the nonmineral land laws of the United States, any lands which are subsequently withdrawn, classified, or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, may, upon application therefor, and making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which patent shall contain a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine, and remove the same.

AN ACT To amend an Act entitled "An Act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest," approved March second, nineteen hundred and eleven.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That an act entitled "An act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of

Locators of mineral oil and gas lands.  
(Vol. 36, p. 1015, amended.)

the United States, or their successors in interest," approved March second, nineteen hundred and eleven, be amended by adding thereto the following section:

Agreements  
for working re-  
served lands  
prior to issue  
of patents.

Disposal of  
proceeds there-  
under.

Lands in na-  
val petroleum  
reserves.

Disposal of  
receipts.

Act of Con-  
gress approved  
Aug. 25, 1914  
(38 Stat. L.,  
708).

"SEC. 2. That where applications for patents have been or may hereafter be offered for any oil or gas land included in an order of withdrawal upon which oil or gas has heretofore been discovered, or is being produced, or upon which drilling operations were in actual progress on October third, nineteen hundred and ten, and oil or gas is thereafter discovered thereon, and where there has been no final determination by the Secretary of the Interior upon such applications for patent, said Secretary, in his discretion, may enter into agreements, under such conditions as he may prescribe with such applicants for patents in possession of such land or any portions thereof, relative to the disposition of the oil or gas produced therefrom or the proceeds thereof, pending final determination of the title thereto by the Secretary of the Interior, or such other disposition of the same as may be authorized by law. Any money which may accrue to the United States under the provisions of this act from lands within the Naval Petroleum Reserves shall be set aside for the needs of the Navy and deposited in the Treasury to the credit of a fund to be known as the Navy Petroleum Fund, which fund shall be applied to the needs of the Navy as Congress may from time to time direct, by appropriation or otherwise."

AN ACT Providing for the purchase and disposal of certain lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, in Tripp County, formerly a part of the Rosebud Indian Reservation in South Dakota.

Public lands.  
Entries al-  
lowed for kao-  
lin, etc., on  
ceded lands of  
Rosebud Indian  
Reservation, S.  
Dak.

Provisos.  
Area restric-  
tion.

Minimum  
price.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, in Tripp County in what was formerly within the Rosebud Indian Reservation in South Dakota, as have heretofore been opened to settlement and entry under acts of Congress which did not authorize the disposal of such mineral lands, shall be open to exploration and purchase and be disposed of under the general provisions of the mining laws of the United States, and the proceeds arising therefrom shall be deposited in the Treasury for the same purpose for which the proceeds arising from the disposal of other lands within the reservation in which such mineral-bearing lands are located were deposited: *Provided*, That the same person, association, or corporation shall not locate or enter more than one claim, not exceeding one hundred and sixty acres in area, hereunder: *Provided further*, That none of the lands or mineral deposits, the disposal of which is herein provided for, shall be disposed of at less

price than that fixed by the applicable mining or coal-land laws, and in no instance at less than their appraised value, to be determined by the Secretary of the Interior.

Act of Congress approved Jan. 11, 1915 (38 Stat. L., 792).

AN ACT Validating locations of deposits of phosphate rock heretofore made in good faith under the placer-mining laws of the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That where public lands containing deposits of phosphate rock have heretofore been located in good faith under the placer-mining laws of the United States and upon which assessment work has been annually performed, such locations shall be valid and may be perfected under the provisions of said placer-mining laws, and patents, whether heretofore or hereafter issued thereon, shall give title to and possession of such deposits: *Provided,* That this act shall not apply to any locations made subsequent to the withdrawal of such lands from location, nor shall it apply to lands included in an adverse or conflicting lode location unless such adverse or conflicting location is abandoned.

Public lands. Placer locations for phosphate rock validated.

*Proviso.* Application restricted.

Act of Congress approved Jan. 11, 1915 (38 Stat. L., 792).

## SPECIAL ACTS.

The act of March 2, 1907 (34 Stat. L., 1232), section 4, provides that the surveyor general of Alaska, under the direction of the Secretary of the Interior, shall furnish receivers a sufficient quantity of numbers to be used in the different classes of official surveys that may be made in the Nome and Fairbanks land districts to meet the requirements thereof, authorizes receivers to furnish numbers for official surveys and an order directing surveyor to make same, such application order and the fee required to be paid to the surveyor general shall be transmitted to the surveyor general, and provides that all surveys thus made shall be approved by the surveyor general as at present.

The act of May 27, 1908 (35 Stat., 317, 365), prohibited mining locations thereafter within the Mount Rainier National Park, but prior valid existent claims were not affected.

Sections 7, 8, and 12, of the act of May 30, 1908 (35 Stat., 558), provides for the extension of the mineral land laws to the classified surplus lands of the Fort Peck Indian Reservation, in the State of Montana.

The act of May 11, 1910 (36 Stat., 354), provides for the establishment of the Glacier National Park, in Montana, and reserves and withdraws from occupancy or disposal under any of the land laws of the United States the lands therein, but protects valid existing claims and locations.

The act of June 7, 1910 (36 Stat., 459), provides for the granting of public lands to certain cities and towns in the State of Colorado for public park purposes and reserves to the United States the oil, coal, and other mineral deposits in such lands.

The act of June 25, 1910 (36 Stat., 848), contains provisions for the establishment and enforcement of miners' labor liens in the Territory of Alaska.

The act of September 30, 1913 (38 Stat. L., 113), authorizes the President to provide a method for opening public lands restored from reservations, etc.

## REGULATIONS.

### NATURE AND EXTENT OF MINING CLAIMS.

1. Mining claims are of two distinct classes: Lode claims and placers.

#### Lode Claims.

2. The status of lode claims located or patented previous to the 10th day of May, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

3. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges, *other* than the one named in the original location, to such as were not *adversely claimed on May 10, 1872*, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

4. From and after the 10th May, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of *fifteen hundred linear feet* along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of *fifteen hundred feet*, but in no event can a location of a vein or lode made after the 10th day of May, 1872, exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

5. With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case *exceed three hundred feet on each side of the middle of the vein at the surface*, and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th May, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements can not extend beyond three hundred feet on *either* side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet can not be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration *where* the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

6. By the foregoing it will be perceived that no lode claim located after the 10th May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts; and that no such local regulations or State or Territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

7. Locators can not exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a *description of the claim or claims* located, by reference to some natural object or permanent monument, as will identify the claim.

8. No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of *bona fide* prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

9. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the *locus* of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

10. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

11. The location notice must be filed for record in all respects as required by the State or Territorial laws and local rules and regulations, if there be any.

12. In order to hold the possessory title to a mining claim located prior to May 10, 1872, the law requires that *ten dollars* shall be expended annually in labor or improvements for each *one hundred feet* in length along the vein or lode. In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed or improvements made thereon annually. Under the provisions of the act of Congress approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims, may be made upon any one claim. Cornering locations are held not to be contiguous.

13. Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation, unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

14. Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

15. Upon the failure of any one of several coowners to contribute his proportion of the required expenditures, the coowners, who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent coowner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days; and if upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent coowner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his coowners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the sworn statement of the publisher as to the facts of publication, giving dates, and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent coowner failed to contribute his proper proportion within the period fixed by the statute.

#### TUNNELS.

16. The effect of section 2323, Revised Statutes, is to give the proprietors of a mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on

the *line thereof* and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted upon which prospecting is prohibited as aforesaid.

17. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

18. A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is *bona fide* their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

#### Placer Claims.

19. But one discovery of mineral is required to support a placer location, whether it be of twenty acres by an individual, or of one hundred and sixty acres or less by an association of persons.

20. The act of August 4, 1892, extends the mineral-land laws so as to bring lands chiefly valuable for building stone within the provisions of said law by authorizing a placer entry of such lands. Registers and receivers should make a reference to said act on the entry papers in the case of all placer entries made for lands containing stone chiefly valuable for building purposes. Lands reserved for the benefit of public schools or donated to any State are not subject to entry under said act.

21. The act of February 11, 1897, provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder.

22. Upon the presentation of every case within the purview of the act of March 2, 1911 (36 Stat. L., 1015), the local officers must advise the chiefs of field division, in order that the latter may make such field examinations as are advisable or necessary, particularly if the land involved has been embraced in a withdrawal, as to the time when the development work was begun, and be prepared to submit the results, if possible, before entry is allowed. Each such case will be considered and adjudicated upon its record in the regular manner.

Observing that the operation of the act is retrospective only, being confined to locations made prior to the date thereof, you will, upon the presentation of any application for patent affected by the provisions of said act, immediately communicate to the proper chief of field division due and full information thereof, to the end that he may procure to be made such investigations as may be necessary to ascertain the facts concerning the inception and subsequent prosecution of development operations, the extent and character of such works, and any other facts bearing upon and affecting the validity of the claim, including the continuousness and diligence with which development proceeded from the date of inception.

Report made of the results of such examinations will be submitted to this office, upon receipt of which the local officers will be advised as to the action to be taken. (Instructions, May 17, 1911, approved, July 11, 1912.)

23. By section 2330 authority is given for subdividing forty-acre legal subdivisions into ten-acre tracts. These ten-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such ten-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

24. A ten-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE.  $\frac{1}{4}$  of the NE.  $\frac{1}{4}$  of the NE.  $\frac{1}{4}$ " of the section, or, in like manner, by appropriate terms, wherever situated; but, in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

25. The proof of improvements must show their value to be not less than *five hundred dollars* and that they were made by the applicant for patent or his grantors. This proof should consist of the affidavit of two or more disinterested witnesses. The annual expenditure to the amount of \$100, required by section 2324, Revised Statutes, must be made upon placer as well as lode locations.

26. Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the

fact should be distinctly stated in the application for patent and in all the notices. But in all cases, whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of two or more witnesses.

27. By section 2330 it is declared that no location of a placer claim made after July 9, 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

28. Section 2331 provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than twenty acres for each individual claimant.

29. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed twenty acres for each individual participating therein; that is, a location by two persons can not exceed forty acres, and one by three persons can not exceed sixty acres.

30. The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations so far as the same are applicable, the law requiring, however, that all placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

Conformity to the public land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

Where a placer location by one or two persons can be entirely included within a square forty-acre tract, by three or four persons within two square forty-acre tracts placed end to end, by five or six persons within three square forty-acre tracts, and by seven or eight persons within four square forty-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

Whether a placer location conforms reasonably with the legal subdivisions of the public surveys is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations

which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L. D., 250.)

#### REGULATIONS UNDER SALINE ACT.

31. Under the act approved January 31, 1901, extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States and the Territory of Alaska, so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder."

32. Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided*, He has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

33. In order that the conditions imposed by the proviso, as set forth in the above paragraph, may duly appear, the application for patent must contain or be accompanied by a specific statement under oath by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. The application for patent should also be accompanied by a showing under oath, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest. (As amended June 4, 1912.)

### PROCEDURE TO OBTAIN PATENT TO MINERAL LANDS.

#### Lode Claims.

34. The claimant is required, in the first place, to have a correct survey of his claim made under authority of the surveyor general of the State or Territory in which the claim lies, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field notes in each case will be prepared by the surveyor general; one plat and the original field notes to be retained in the office of the surveyor general; one copy of the plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district, to be retained on his files for future reference. As there is no resident surveyor general for the State of Arkansas, applications for the survey of mineral claims in said State should be made to the Commissioner of this office, who, under the law, is *ex officio* the United States surveyor general.

The surveyor general will prepare the original plat on Form 4-675. All lines clear and sharp in black. All letters and figures clear and sharp in black.

The original plat, so prepared, will be signed and dated by the surveyor general and forwarded to the General Land Office flat or in tube and unmounted.

As to plats of survey of mining claims outside of the Territory of Alaska, the Commissioner will have three photolithographic copies made upon drawing paper, which copies, with the original plat, will be forwarded to the surveyor general, the duplicate, triplicate, and quadruplicate to be signed by him, and the four plats to be filed and disposed of in the same manner as provided in paragraph 34 of the Mining Regulations, viz: One plat and the original field notes to be retained in the office of the surveyor general; one copy of the plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district, to be retained on his files for future reference.

As to plats of survey of mining claims in the Territory of Alaska, the Commissioner will have three photolithographic copies made upon drawing paper, two copies of which, with the original plat, will be forwarded to the surveyor general, the duplicate and triplicate to be signed by him, and the three plats to be filed and disposed of as follows: One plat and the original field notes to be retained in the office of the surveyor general; one plat and a copy of the field notes to be given the claimant, for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district to be retained in his files for future reference. The Commissioner will mail one photolithographic copy of the plat, made upon drawing paper, direct to the applicant for survey, or to his agent or attorney, when the application is made by agent or attorney, at his record address, to be used for posting on the land.

A certain number of photolithographic copies will be furnished the surveyor general for sale at a cost of 30 cents each, and a photolithographic copy printed on tracing paper will be furnished the surveyor general, from which blue prints may be made, to be sold at cost. (Instructions, July 29, 1911, as amended Oct. 8, 1912.)

35. The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or Territory or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a United States mineral surveyor such location survey can not be substituted for that required by the statute, as above indicated.

36. The surveyors general should designate all surveyed mineral claims by a progressive series of numbers, beginning with survey No. 37, irrespective as to whether they are situated on surveyed or unsurveyed lands, the claim to be so designated at date of issuing the order

therefor, in addition to the local designation of the claim; it being required in all cases that the plat and field notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the locus of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a distance of more than two miles from such public corner, in which latter case it should be connected with a United States mineral monument. Such connecting line must not be more than *two miles* in length, and should be measured on the ground direct between the points, or calculated from actually surveyed traverse lines if the nature of the country should not permit direct measurement. If a regularly established survey corner is within two miles of a claim situated on unsurveyed lands, the connection should be made with such corner in preference to a connection with a United States mineral monument. The connecting line or traverse line must be surveyed by the mineral surveyor at the time of his making the particular survey and be made a part thereof.

37. (a) Promptly upon the approval of a mineral survey the surveyor general will advise both this office and the appropriate local land office, by letter (Form 4-286), of the date of approval, number of the survey, name and area of the claim, name and survey number of each approved mineral survey with which actually in conflict, name and address of the applicant for survey, and name of the mineral surveyor who made the survey; and will also briefly describe therein the *locus* of the claim, specifying each legal subdivision or portion thereof, when upon surveyed lands, covered in whole or in part by the survey; but hereafter no segregation of any such claim upon the official township-survey records will be made until mineral entry has been made and approved for patent, unless otherwise directed by this office.

(b) Upon application to make agricultural entry of the residue of any original lot or legal subdivision of forty acres, reduced by mining claims for which patent applications have been filed and which residue has been already reallocated in accordance therewith, the local officers will accept and approve the application as usual, if found to be regular. When such an application is filed for any such original lot or subdivision, reduced in available area by duly asserted mining claims but not yet relotted accordingly, the local officers will promptly advise this office thereof; and will also report and identify any pending application for mineral patent affecting such subdivision which the agricultural applicant does not desire to contest. The surveyor general will thereupon be advised by this office of such mining claims, or portions thereof, as are proper to be segregated, and directed to prepare at once, upon the usual drawing-paper township blank, diagram of amended township survey of such original lot or legal forty-acre subdivision so made fractional by such mineral segregation, designating the agricultural portion by appropriate lot number, beginning with No. 1 in each section and giving the area of each lot, and will forthwith transmit one approved copy to the local land office and one to this office. In the meantime the local officers will accept the agricultural application (if no other objection appears), suspend it with reservation of all rights of the applicant if continuously asserted by

him, and upon receipt of amended township diagram will approve the application (if then otherwise satisfactory) as of the date of filing, corrected to describe the tract as designated in the amended survey.

(c) The register and receiver will allow no agricultural claim for any portion of an original lot or legal forty-acre subdivision, where the reduced area is made to appear by reason of approved surveys of mining claims and for which applications for patent have not been filed, until there is submitted by such agricultural applicant a satisfactory showing that such surveyed claims are in fact mineral in character; and applications to have lands asserted to be mineral, or mining locations, segregated by survey, with the view to agricultural appropriation of the remainder, will be made to the register and receiver for submission to the Commissioner of the General Land Office, for his consideration and direction, and must be supported by the affidavit of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required in any case, that the lands sought to be segregated *as mineral* are in fact mineral in character; otherwise, in the absence of satisfactory showing in any such case, such original lot or legal subdivision will be subject to agricultural appropriation only. When any such showing shall be found to be satisfactory and the necessary survey is had, amended township diagram will be required and made as prescribed in the preceding section.

38. The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres.
Total area of claim.....	10.50
Area in conflict with survey No. 302.....	1.56
Area in conflict with survey No. 948.....	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed.....	1.48

It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

39. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of

his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey. Too much care can not be exercised in the preparation of this notice, inasmuch as the data therein are to be repeated in the other notices required by the statute, and upon the accuracy and completeness of these notices will depend, in a great measure, the regularity and validity of the proceedings for patent.

(a) The notices of applications for patent for lands in Alaska are, in many cases, not sufficient to apprise adverse claimants and the public generally of the location of the land applied for, and therefore do not serve the purpose for which such notices are required; nor can the location of the land be ascertained from the application papers themselves and without obtaining information from other sources. This is due principally to the large area of unsurveyed land in the district and remoteness from centers of population of much of the country. In order to give a more definite description of the land applied for the following special instructions with reference to the Territory of Alaska are issued, which are supplemental to but do not change or modify existing regulations:

(b) The field notes of survey of all claims within the Territory of Alaska, where the survey is not tied to a corner of the public survey, shall contain a description of the location or mineral monument to which the survey is tied, by giving its latitude and longitude, and its position with reference to rivers, creeks, mountains or mountain peaks, towns, or other prominent topographical points or natural objects or monuments, giving the distances and directions as nearly accurate as possible, especially with reference to any well-known trail to a town or mining camp, or to a river or mountain appearing on the map of Alaska, which description shall appear in the field notes regardless of whether or not the survey be tied to an existing monument, or to a monument established by the surveyor when making the survey in accordance with existing regulations with reference to the establishment of such monuments. The description of such monument shall appear in a paragraph separate from the description of the courses and distances of the survey.

(c) All notices of applications for patent for lands in the Territory of Alaska, where the survey on which the application is based is not tied to a corner of the public survey, shall, in addition to the description required to be given by existing regulations, describe the monument to which the claim is tied by giving its latitude and longitude and a reference by approximate course and distance to a town, mining camp, river, creek, mountain, mountain peak, or other natural object appearing on the map of Alaska, and any other facts shown by the field notes of survey which shall aid in determining the exact location of such claim without an examination of the record or a reference to other sources. The registers and receivers will exercise discretion in the matter of such descriptions in the published notices, bearing in mind the object to be attained, of so describing the land embraced in the claim as to enable its location to be ascertained from the notice of application. (Instructions, Dec. 23, 1913.)

40. After posting the said plat and notice upon the premises, the claimant will file with the proper register and receiver a copy of such plat and the field notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting; a copy of the *notice* so posted to be attached to and form a part of said affidavit.

41. Accompanying the field notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom, and, if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the land department to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.

(a) The register and receiver will require each person applying to enter or in any manner acquire title to any of the lands in Alaska, under any law of the United States, to file a corroborated affidavit to the effect that none of the lands covered by his application are embraced in any pending application for an allotment under the act of May 17, 1906 (34 Stat., 197), or in any pending allotment; that no part of said land was at the date of the location of the land claimed under the mining law occupied or claimed by any Indian, whose occupancy or claim existed on the date of the acts granting to natives of Alaska the right to hold land used, occupied, or claimed by them (Acts of Congress of May 17, 1884, 23 Stat., 24, and June 6, 1900, 31 Stat., 330), and had been continued down to and including date of location; that such land is in the *bona fide* legal possession of the applicant; and that no part of such land is in the *bona fide* legal possession of or is occupied by any Indian or native. (37 L. D., 616, and 43 L. D., 88, 272.)

42. This sworn statement must be supported by a copy of each location notice, certified by the legal custodian of the record thereof, and also by an abstract of title of each claim certified by the legal custodian of the records of transfers, or by a duly authorized abstracter of titles. The certificate must state that no conveyances affecting, or purporting to affect, the title to the claim or claims appear of record other than those set forth.

Outside of the Territory of Alaska, the application for patent will be received and filed if the abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental abstract brought down so as to include the

date of the filing of the application. Publication will not be ordered until the showing as to title is thus completed and the local land officers are satisfied that full title was in the applicant on the day of the filing of the application.

In the Territory of Alaska the application for patent will be received and filed and the order for publication issued if the abstract showing full title in the applicant is brought down to a day reasonably near the date of the presentation of the application. A supplemental abstract of title brought down so as to include the date of the filing of the application must be furnished prior to the expiration of the 60-day period of publication.

No certificate from an abstractor or abstract company will be accepted until approval by the Commissioner of the General Land Office of a favorable report of the chief of field division, or United States district attorney whose division or district embraces the lands in question, as to the reliability and responsibility of such abstractor or company. (As amended Jan. 9, 1912.)

43. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

44. Before approving for publication any notice of an application for mineral patent, local officers will be particular to see that it includes no land which is embraced in a prior or pending application for patent or entry, or for any land embraced in a railroad selection, or for which publication is pending or has been made by any other claimants, and if, in their opinion, after investigation, it should appear that notice of a mineral application should not, for this or other reasons, be approved for publication, they should formally reject the same, giving the reasons therefor, and allow the applicant 30 days for appeal to this office under the Rules of Practice. (As amended Aug. 9, 1911.)

Local officers will give prompt and appropriate notice to the railroad grantee of the filing of every application for mineral patent which embraces any portion of an odd-numbered section of surveyed lands within the primary limits of a railroad land grant, and of *every* such application embracing *any* portion of unsurveyed lands within such limits (except as to any such application which embraces a portion or portions of those ascertained or prospective odd-numbered sections only, within the limits of the grant in Montana and Idaho to the Northern Pacific Railroad Company, which have been classified as mineral under the act of February 26, 1895, without protest by the company within the time limited by the statute or the mineral classification whereof has been approved).

Should the railroad grantee file protest and apply for a hearing to determine the character of the land involved in any such application for mineral patent, proceedings thereunder will be had in the usual manner.

Any application for mineral patent, however, which embraces lands previously listed or selected by a railroad company will be disposed of as provided by the first section of this paragraph, and the applicant afforded opportunity to protest and apply for a hearing or to appeal.

Notice should be given to the duly authorized representative of the railroad grantee, in accordance with the Rules of Practice. When the claims applied for are upon unsurveyed land, the burden of proving that they are situate within prospective odd-numbered sections will rest upon the railroad.

Evidence of service of notice should be filed with the record in each case.

45. Upon the receipt of these papers, if no reason appears for rejecting the application, the register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. When the notice is published in a *weekly* newspaper, nine consecutive insertions are necessary; when in a *daily* newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

46. The notices so published and posted must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances. (See also par. 39 (a), (b), (c).)

47. The register shall publish the notice of application for patent in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

48. The claimant at the time of filing the application for patent, or at any time within the sixty days of publication, is required to file with the register a certificate of the surveyor general that not less than five hundred dollars' worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to five hundred dollars for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated in a patent, serve to identify the premises fully, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the *locus* thereof: *Provided*, That as to all applications for patents made and passed to entry before July 1, 1898, or which are by protests or adverse claims prevented from being passed to entry before that time, where the application embraces several locations held in common, proof of an expenditure of five hundred dollars upon the group will be sufficient, and an expenditure of that amount need not be shown to have been made upon, or for the benefit of, each location embraced in the application.

49. The surveyor general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from the mineral surveyor who actually makes survey and examination of the premises, in so far as such matters rest in the personal knowledge of the mineral surveyor. The mineral surveyor should specify with particularity and full detail the character and extent of such improvements. As to when and by whom the improvements were made and other essential matters not within such mineral surveyor's personal knowledge, recourse may be had by the surveyor general to corroborated affidavits by persons possessing such personal knowledge, or the best evidence in this behalf otherwise obtainable. This showing should accompany the report of the mineral surveyor as to improvements. (As amended Dec. 16, 1914.)

50. It will be convenient to have this certificate indorsed by the surveyor general, both upon the plat and field notes of survey filed by the claimant as aforesaid.

51. After the sixty days' period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

52. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of five dollars for each acre and five dollars for each fractional part of an acre, except as otherwise provided by law, the receiver issuing the usual receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land office, after which the complete record will be forwarded to the Commissioner of the General Land Office and a patent issued thereon if found regular.

53. At any time prior to the issuance of patent protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest can not, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes. (See *Turner v. Sawyer*, 150 U. S., 578-586.)

54. Any party applying for patent as *trustee* must disclose fully the nature of the trust and the name of the *cestui que trust*; and such

trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

55. The annual expenditure of one hundred dollars in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes, is, with the exception of certain phosphate placer locations, validated by the act of January 11, 1915 (see regulations thereunder, dated Mar. 31, 1915, 44 L. D., 46), solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

56. The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

57. The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

#### Placer Claims.

58. The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

59. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here, it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter, and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims; the price of placer claims being fixed, however, at two dollars and fifty cents per acre or fractional part of an acre.

60. In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be

stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes, must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

While these data are required as a part of the mineral surveyor's report under paragraph 167, in case of placers taken by special survey, it is proper that the application for patent incorporate these facts under the oath of the claimant.

Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

As prescribed by paragraph 25, this statement as to the description and value of the improvements must be corroborated by the affidavits of two disinterested witnesses.

Applications awaiting entry, whether published or not, must be made to conform to these regulations, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

Local land officers are instructed that if the proofs submitted in placer applications under this paragraph are not satisfactory as showing the land as a whole to be placer in character, or if the claims impinge upon or embrace water courses or bodies of water, and thus raise a doubt as to the *bona fides* of the location and application, or the character and extent of the deposit claimed thereunder, to call for further evidence, or if deemed necessary, request the specific attention of the Chief of Field Service thereto in connection with the usual notification to him under the circular instructions of April 24, 1907,<sup>1</sup> and suspend further action on the application until a report thereon is received from the field officer.

Attention is directed to the act of Congress approved August 1, 1912 (37 Stat. L., 242), entitled "An act to modify and amend the mining laws in their application to the Territory of Alaska, and for

<sup>1</sup> Rule 7 of this circular amended Oct. 30, 1913. (See 42 L. D., 474.)

other purposes." In administering this act the foregoing regulations should be followed in so far as they are applicable, and these additional instructions of October 29, 1912, are prescribed:

It is important to note that this act applies exclusively to placer mining claims located in Alaska on or after August 1, 1912. It does not in any manner relate to lode mining claims, or to placer mining claims located prior to said date. The terms of the act lay strict limitations and conditions with respect to placer locations made upon or after said date.

Section 1 of the act provides that no association placer claim shall be located after August 1, 1912, in excess of 40 acres. This limitation is positive whatever may be the number of persons associated together or whatever the local district rules or regulations may permit.

Said section further provides that on every placer mining claim located in Alaska after the passage of the act, and until patent therefor has been issued, not less than \$100 worth of labor must be performed or improvements made during each year, including the year of location, for each and every 20 acres or excess fraction thereof included in the claim. This means that the *first* annual expenditure on such a placer mining location must be accomplished for and during the calendar year in which the claim is located, instead of during the calendar year succeeding that in which the location is made. Moreover, the amount of annual expenditure is dependent upon the size of the claim, it being required that at least \$100 must be expended for each 20 acres, or excess fraction thereof, embraced in the location.

By section 2 it is provided that no person, as attorney or agent for another, may locate any placer mining claim unless duly authorized by a power of attorney properly acknowledged and recorded in some recorder's office within the judicial division where the location is made. Furthermore, an authorized agent or attorney can act in making locations of placer mining claims for only two individual principals or one associate principal during any calendar month and during that period may not lawfully locate more than two claims for any one principal either individual or association. No placer claim can lawfully be located except in compliance with and under the limitations of the act.

In order that the land department may be fully advised in the premises, the following requirements must be met with regard to applications for placer mining claims located in Alaska on or after August 1, 1912:

(a) Where location is made by agent or attorney the power of attorney must be in writing and must be executed and acknowledged in accordance with the laws of the Territory of Alaska or of the State, Territory, or District in which it shall be executed. It must be recorded in the proper recorder's office, as prescribed by the act. The application for patent must be accompanied by a certified copy of such power of attorney which must show the recordation thereof; but it will be sufficient if such certified copy is attached to and made a part of the abstract of title.

(b) One of the principal purposes of the act is to limit the number of placer mining locations made in Alaska through agents or attorneys. An agent or attorney can not at one time represent more than *two individuals or one association* under powers of attorney. A duly

authorized agent may make two locations for each of two individual principals, or for one association principal, during any calendar month, but he can make no further locations during that month for those or other principals.

The application for patent should accordingly be accompanied by the sworn statement of the agent or attorney setting forth specifically the names of all placer mining claims, together with the date of location and names of the locators, which were located or attempted to be located by him under powers of attorney during the calendar month in which the placer claim applied for was located.

(c) By section 3 it is prescribed that no person shall directly locate, or through an agent or attorney cause or procure to be located, for himself more than two placer mining claims in any calendar month: *Provided, however,* That one or both of such locations may be included in an association claim.

Whenever a person or an association has participated in the locating of placer mining claims in Alaska to the extent of two such claims in any calendar month, such person or such association thereby exhausts the right to make placer location for that month. The application for patent, therefore, for a placer mining claim located in Alaska on or after August 1, 1912, must contain or be accompanied by a specific statement, under oath, as to each locator who had an interest therein, showing specifically and in detail all placer locations made by him, or in which he was associated, either directly or through any agent or attorney, during the calendar month in which the claim applied for was located. If no locations in excess of those permitted by law were made during such calendar month a specific statement, under oath, to that effect, should be submitted. This showing must be made in addition to that hereinabove required of the agent himself.

Section 4 of the act prohibits the patenting of any placer mining claim located in Alaska after the passage of the act, which contains a greater area than that fixed by law or which is longer than three times its greatest width. The surveyor general will be careful to observe the above requirements and will not approve any survey of a placer location which does not in area and dimensions conform to the provisions of law.

By section 5 of the act it is declared that any placer mining claim attempted to be located in violation of the provisions and limitations of the act shall be null and void and the whole area covered by such attempted location may be located by any qualified person the same as if no such prior attempted location had been made. Consequently, any attempted placer location not made in conformity with the act is a nullity and the land covered thereby is open for and subject to proper location at any time.

It will be observed that the act does not affect the number of claims, lode or placer, and if placer whether located before or after the passage of the act, which may be included in a single application proceeding.

### MILL SITES.

61. Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims, and as section 2337, which provides for the patenting of mill sites, is

embraced in the chapter of the Revised Statutes relating to mineral lands, they are therefore included in this circular.

62. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such non-contiguous mill site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

63. Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill-site claim.

64. In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

65. In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of two or more persons capable, from acquaintance with the land, to testify understandingly.

#### **CITIZENSHIP.**

66. The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of their charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

67. In case of an individual or an association of individuals who do not appear by their duly authorized agent, the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

68. In case an applicant has declared his intention to become a citizen or has been naturalized, his affidavit must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

69. The affidavit of the claimant as to his citizenship may be taken before the register or receiver, or any other officer authorized to administer oaths within the land districts; or, if the claimant is residing beyond the limits of the district, the affidavit may be taken before the clerk of any court of record or before any notary public of any State or Territory.

70. If citizenship is established by the testimony of disinterested persons, such testimony may be taken at any place before any person authorized to administer oaths, and whose official character is duly verified.

71. No entry will be allowed until the register has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

72. The mineral entries will be given the current serial numbers according to the provisions of the circular of June 10, 1908, whether the same are of lode or of placer claims or of mill sites.

73. In sending up the papers in a case the register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued. The schedule of papers, form 4-252f, should accompany the returns with all mineral applications and entries allowed.

### **POSSESSORY RIGHT.**

74. The provisions of section 2332, Revised Statutes, will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

75. When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State or Territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by

his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and *bona fides* which he may desire to submit in support of his claim.

76. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as aforesaid other than that which has been finally decided in favor of the claimant.

77. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

### ADVERSE CLAIMS.

78. An adverse claim must be filed with the register and receiver of the land office where the application for patent is filed or with the register and receiver of the district in which the land is situated at the time of filing the adverse claim. It must be on the oath of the adverse claimant, or it may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated.

79. Where an agent or attorney in fact verifies the adverse claim, he must distinctly swear that he is such agent or attorney, and accompany his affidavit by proof thereof.

80. The agent or attorney in fact must make the affidavit in verification of the adverse claim within the land district where the claim is situated.

81. The adverse claim so filed must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

82. In order that the "*boundaries*" and "*extent*" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: *Provided, however,* That if the application for patent describes the claim by

legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions, it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor, and its correctness officially certified thereon by him.

83. Upon the foregoing being filed within the sixty days' period of publication, the register, or in his absence the receiver, will immediately give notice in writing to *the parties* that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

84. When an adverse claim is filed as aforesaid, the register or receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waived or withdrawn.

(a) The act of Congress approved June 7, 1910 (36 Stat. L., 459), relates to the filing of adverse claims and the institution of suits thereon, with respect to mineral applications in the Territory of Alaska.

In administering this act the foregoing regulations should be followed in so far as they are applicable, and these additional instructions are prescribed.

#### EXTENSION OF TIME FOR FILING ADVERSE CLAIMS.

The act provides that adverse claims may be filed at any time during the 60-day period of publication or within 8 months thereafter. This provision applies to any application where the 60-day period of publication ended with, or ends after, June 7, 1910, and operates to enlarge by 8 months additional the time within which an adverse claim may be filed. This provision does not apply to any application under which the 60-day period of publication ended with, or before, June 6, 1910, for, if no adverse claim was seasonably filed in such case, the statutory assumption that none existed has arisen, upon the expiration of the publication period, in favor of the applicant.

#### EXTENSION OF TIME WITHIN WHICH ADVERSE SUITS MAY BE INSTITUTED.

(b) It is also provided by the act that adverse suits may be instituted at any time within 60 days after the filing of adverse claims in the local land office. This provision applies to any adverse claim under which the 30-day period fixed under the former law for commencing the adverse suit was running on, or expired with, June 7,

1910, and enlarges such time to a period of 60 days, and also to any adverse claim which is seasonably filed on, or after, June 7, 1910. Such provision has no operation in a case where, under the former law, the 30-day period within which to institute suit on an adverse claim expired with, or ended before, June 6, 1910, and the 60-day publication period also expired on or before June 6, 1910.

Registers and receivers of United States land offices in Alaska will exercise the greatest care in applying the provisions of the act, and will allow no mineral entry until after the expiration of the full period granted for the filing of adverse claims. For example, on any application under which the publication period ended with, or after, June 7, 1910, no entry will in any event be allowed until after the expiration of the eight-months period following the publication period. (Instructions, June 25, 1910.)

85. Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the register a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes, and a certificate of the clerk of the court under the seal of the court showing, in accord with the record facts of the case, that the judgment mentioned and described in the judgment roll aforesaid is a final judgment; that the time for appeal therefrom has, under the law, expired, and that no such appeal has been filed, or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed. (As amended Apr. 9, 1915.)

86. Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

87. After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

88. Where an adverse claim has been filed but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required. (Amended Nov. 6, 1912.)

### **APPOINTMENT OF SURVEYORS FOR SURVEY OF MINING CLAIMS AND CHARGES.**

89. Section 2334 provides for the appointment of surveyors to survey mining claims, and authorizes the Commissioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications in mining cases. Under this authority of law, the following rates have been established as the maximum charges for newspaper publications:

(1) The charge for the publication of notice of application for patent in a mining case, in all districts, exclusive of Fairbanks,

Alaska, shall not exceed the legal rates allowed by the laws of the State, wherein the notice is published, for the publication of legal notices, and in no case shall the charge exceed \$7 for each 10 lines of space occupied where publication is had in a daily newspaper, and where a weekly newspaper is used as a medium of publication \$5 shall be the maximum charge for the same space. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

For such publications in the Fairbanks district the maximum rate is fixed at \$10 for each 10 lines of space in a daily newspaper for the required period, and at \$7 for the same space and time if publication be had in a weekly newspaper.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates are established upon the understanding that they are to be in the usual body type used for legal notices.

(2) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State, and shall not exceed \$8 for 5 publications in a weekly newspaper, or \$10 for publication in a daily newspaper for 30 days. (As amended June 23-July 1, 1913, and Nov. 28, 1913.)

90. The surveyors general of the several districts will, in pursuance of said law, appoint in each land district as many competent surveyors for the survey of mining claims as may seek such appointment, it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States. The statute provides that the claimant shall also be at liberty to employ any United States mineral surveyor to make the survey. Each surveyor appointed to survey mining claims before entering upon the duties of his office or appointment shall be required to enter into a bond of not less than \$5,000 for the faithful performance of his duties.

91. With regard to the platting of the claim and other office work in the surveyor general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer or designated depository in favor of the United States Treasurer, to be passed to the credit of the fund created by "deposits by individuals for surveying public lands," and file with the surveyor general duplicate certificates of such deposit in the usual manner.

92. The surveyors general will endeavor to appoint surveyors to survey mining claims so that one or more may be located in each mining district for the greater convenience of miners.

93. The usual oaths will be required of these surveyors and their assistants as to the correctness of each survey executed by them.

The duty of the surveyor ceases when he has executed the survey and returned the field notes and preliminary plat thereof with his report to the surveyor general. He will not be allowed to prepare for the mining claimant the papers in support of an application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim.

The surveyors general and local land officers are expected to report any infringement of this regulation to this office.

94. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

### **FEES OF REGISTERS AND RECEIVERS.**

95. The fees payable to the register and receiver for filing and acting upon applications for mineral-land patents are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars is payable to each officer by an adverse claimant at the time of filing his adverse claim. (Sec. 2238, R. S., par. 9.)

[Paragraphs 96, 97, and 98 are superseded by the general circular instructions of May 4, 1912, prescribing the method of keeping records and accounts relating to the public lands.]

### **HEARINGS TO DETERMINE CHARACTER OF LANDS.**

99. The Rules of Practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

100. Public land returned by the surveyor general as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome by testimony taken in the manner hereinafter described.

101. Hearings to determine the character of lands:

(1) Lands returned as mineral by the surveyor general.

When such lands are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral affidavit in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is *not* required, notice thereof must first be given by publication for sixty days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(2) Lands returned as agricultural and alleged to be mineral in character.

Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

[Paragraphs 102 to 104, inclusive, are superseded by appropriate instructions relative to nonmineral proofs in railroad, State, and

forest lieu selections contained in separate circulars. (See, as to railroad selections, Instructions in 43 L. D., 476; as to State selections, circular in 39 L. D., 39; and as to forest lieu selections, 31 L. D., 372, 33 L. D., 558, 36 L. D., 278, 346, and 38 L. D., 287.)]

105. At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof—whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

106. The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

107. The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

108. When the case comes before this office, such decision will be made as the law and the facts may justify. In cases where a survey is necessary to set apart the mineral from the agricultural land, the proper party, *at his own expense*, will be required to have the work done by a reliable and competent surveyor to be designated by the surveyor general. Application therefor must be made to the register and receiver, accompanied by description of the land to be segregated and the evidence of service upon the opposite party of notice of his intention to have such segregation made. The register and receiver will forward the same to this office, when the necessary instructions for the survey will be given. The survey in such case, where the claims to be segregated are vein or lode claims, must be

executed in such manner as will conform to the requirements in section 2320, Revised Statutes, as to length and width and parallel end lines.

(a) In order to secure uniformity of practice in the execution of mineral segregation surveys authorized under paragraph 108 et seq. of these regulations and to present a proper basis for intelligent action, the following directions are given. They will supersede all previous instructions with which they are in conflict, and will be adopted without reference to precedent or practice formerly permitted by the General Land Office or the Department.

(b) There appears to exist a very general, although erroneous, assumption that, because the surveys in question relate to the segregation of mineral land, are authorized by the mining regulations, and are usually executed by United States mineral surveyors, they therefore partake of the nature of mineral surveys. That this is not the case will be evident upon consideration of the fact that the necessity for mineral segregation surveys arises almost exclusively with reference to "lands returned as agricultural and alleged to be mineral in character" (ante, par. 101, sec. 2), where the survey, made at the instance, for the benefit, and at the expense of the homestead entryman, is designed solely to define the boundaries of, and provide a legal description for, the *agricultural* land for which application is made. The circumstances that such surveys are usually executed by United States mineral surveyors is without significance, as the regulations provide only that the work shall be done by "a reliable and competent surveyor to be designated by the surveyor general." This would include county or other surveyors in private practice.

(c) Authority for the survey having issued, and a surveyor having been designated by the surveyor general, the instructions addressed to the surveyor will particularly emphasize the fact that the survey is nonmineral in character, and as an aid to the preparation of such instructions the surveyor general's attention is directed to the following considerations:

(d) To all intents and purposes the segregation survey is *ex parte* procedure and confers no permanent rights or benefits upon the mineral claimant. The definition, in whole or in part, of the boundaries of the mining claim is merely incidental to the determination of the confines of the agricultural entry, and the survey, which may involve the retracement and reestablishment of the public-land lines and the subdivision of the section, is effective upon the mineral claim only as a location survey, permitting greater accuracy of description than is usually attained by the somewhat crude methods of the locator.

(e) While a discussion in detail of the field procedure attendant upon the execution of mineral segregation surveys is beyond the purpose of these regulations, and is a subject properly to be determined by the surveyor general, after consideration of the conditions surrounding the individual case, the *extent* of the required operations is a question of such importance, as affecting not only the actual field work but also the method to be adopted for the subsequent office computations, that some comment thereon appears desirable.

(f) As a preliminary to its consideration, however, it is proper to recognize the generally accepted principle that where any legal subdivision of the public domain is invaded by a segregation survey the

former loses its identity as a unit of disposal, and the resultant fractional lots must depend for their area upon the data supplied by the survey, without reference to the stated area of the subdivision. This principle, while intrinsically sound, is found in practice to result in a refinement of little utility when applied to regular sections whose closure is acceptable. Its observance is therefore frequently ignored, and this is true, in particular, where the segregation of patent mineral surveys is concerned, the procedure in such cases being merely that of office protraction and computation from the assembled mineral and township records.

(g) The *extent* of any mineral segregation survey is dependent primarily upon the *condition of the section or sections invaded*, as indicated by the actual alinement and measurement of the boundaries thereof. With this fact clearly in mind, and with an equal recognition of the nonmineral character of the survey, the surveyor will, after preliminary reconnaissance, readily determine the amount of field work required in any given case. It frequently happens that a direct connection of the mineral location by a tie or ties to convenient existing and identified corners of the public-land survey, followed by a survey of the out-boundaries of the mining claim or claims, thus presenting data equivalent to those supplied by a patent mineral survey, will, with the subsequent office protractions for area, be found adequate for the segregation, but this sufficiency is evident only when the section invaded is itself found to be actually conformable, within Manual limits, to the record thereof. In many other cases the actual condition of the section may be so far removed from that represented by the record that it would be impossible to assert even approximate accuracy for lot areas obtained by deducting the acreage of the mineral land, as determined by the survey, from the nominal area of the legal subdivision shown upon the township plat.

(h) It is therefore apparent that the first duty of the surveyor is to determine by retracement the actual condition of the section invaded, and provision therefor should be embodied, in future, in the instructions of the surveyor general. If the result is satisfactory, and a reasonable agreement with the approved record is indicated, he may then proceed with the segregation survey; and upon evidence of proper closure the surveyor general's office may determine the resulting lot areas by protraction and deduction, with the assurance that no error in excess of allowable limits has been introduced. If, on the other hand, the retracement reveals radical defects in the section, and serious disagreement with the record, it will be necessary for the surveyor to subdivide the section, or so much thereof as is invaded by the mineral claims, restoring any lost corners, and locating such quarter-quarter-section corners as are required. The segregation survey will then be referable strictly to the conditions so defined, and the resultant lot areas will be calculated upon the basis of the data furnished by the *survey* and *not* by reference to the nominal areas shown upon the township plat.

(i) Where, however, it appears upon retracement that the absence of corners, and the obliteration of other evidences of the original public land survey is so general as to require extensive restorations and a search for controlling corners remote from the section or sections affected by the segregation, the execution of which would impose upon the entryman unreasonable hardship and expense, the

designated surveyor will proceed *only* with the survey of the mineral location as provided in subdivision (g) hereof, and will, upon transmittal of his returns to the United States surveyor general, report to that officer the conditions which precluded his completion of the survey. Upon receipt of such report, the United States surveyor general will, if the explanations thus submitted are acceptable, request authority from the General Land Office to employ the services of an United States surveyor for the resurvey and subdivision necessary to complete the segregation and determine the true condition of the section or sections involved. It is believed, however, that the necessity for this procedure will not frequently arise, and surveyors general are advised that authority for such action will issue only in cases that are clearly exceptional.

(j) Regarding the limit of error applicable to segregation surveys, it appears illogical to demand greater accuracy in the subdivision than obtains in the section itself, and therefore a limit of one part in 640 in latitude and in departure may be adopted, but the surveyor should strive to reduce the error in closure wherever possible. The considerations which require great precision in an official mineral survey are not present in these cases, but the establishment of the lines and corners of the mineral location should be attended by such care and exactness of execution that their position will not require revision by the patent survey which may follow. This is highly important for the reason that while theoretically subject to such revision, the result in practice is the creation of small fractional areas of questionable utility for mining operations, and yet excluded from the agricultural classification.

(k) Upon completion of the survey and the receipt by the surveyor general's office of the returns thereof, he will cause a critical examination to be made with reference to their accuracy and sufficiency. The field notes will be so prepared as to present, first, the record of the sectional retracement, restoration, and subdivision; second, the connection of the mineral location or locations therewith; and, finally, the record of the segregation survey proper, the latter to include a statement of the area of the mineral lands eliminated from each section. All measurements will be returned in chains and links. The title page and oaths covering the notes will be of the regulation township form (4-679, 4-680), and will contain such descriptive matter as is appropriate. One transcript of the whole will be prepared for the files of the General Land Office.

(l) The plat of survey will be prepared in triplicate, and will be of standard township size. It will exhibit only the section or sections involved, and will display an appropriate title and certificate of approval. A scale of 10 or 20 chains to the inch is suggested as convenient. The plat will be rendered strictly conformable to the field notes of the survey and will present all essential data as to courses and distances (true lines) of sectional retracements and subdivision; boundaries of the mineral location or locations; ties, intersections, etc.; and will in all cases afford information sufficient for a determination of the areas of the fractional lots created.

(m) The lots in question will be designated in the usual manner by consecutive numbers, beginning with that next higher than the series of the previous survey. Their areas will be calculated in

strict conformity with the principles heretofore discussed; that is, by deduction of the returned and verified mineral area (which need not appear upon the plat) from the nominal area of the legal subdivision, where the section is in reasonable agreement with its record and requires no field subdivision, or in the case of defective sections, by balanced traverses, based upon the actual field returns of the combined subdivisional and segregation surveys.

(n) Upon completion of the office work and approval of the survey the duplicate plat and transcript of field notes will be transmitted to the General Land Office for examination and acceptance.

(o) Inquiries as to procedure in special cases, and the requests for instructions or explanation covering minor items of practice not herein noted, should be addressed to the Commissioner of the General Land Office in connection with the specific survey to which they are referable.

109. Such survey when executed must be properly sworn to by the surveyor, either before a notary public, United States commissioner, officer of a court of record, or before the register or receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

110. Upon the filing of the plat and field notes of such survey, duly sworn to as aforesaid, with the surveyor general, for his verification and approval, he will, if he finds the work correctly performed, approve the same, sign and date the approved plats and field notes, and thereupon transmit one copy of the plat and field notes to this office for its examination and acceptance. After this office shall have examined and accepted the returns of such survey and the plat and field notes thereof, it will duly notify the surveyor general of its examination and acceptance, who will thereafter promptly furnish an authenticated copy of such plat to the proper local land office for filing there.

The copy of plat furnished the local office and this office must be a diagram verified by the surveyor general, showing the claim or claims segregated, and designating the separate fractional agricultural tracts in each 40-acre legal subdivision by the proper lot number, beginning with No. 1 in each section, and giving the area in each lot, the same as provided in paragraph 37 in the survey of mining claims on surveyed lands, and paragraph 108, subdivision (m).

111. The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with the foregoing regulations.

Blank forms for proofs in mineral cases are not furnished by the General Land Office.

### **TERRITORY OF ALASKA.**

112. Section 13, act of May 14, 1898, according to native-born citizens of Canada "the same mining rights and privileges" in the Territory of Alaska as are accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada, is not now and never has been operative, for

the reason that the only mining rights and privileges granted to any person by the laws of the Dominion of Canada are those of leasing mineral lands upon the payment of a stated royalty, and the mining laws of the United States make no provision for such leases.

113. For the sections of the act of June 6, 1900, making further provision for a civil government for Alaska, which provide for the establishment of recording districts and the recording of mining locations; for the making of rules and regulations by the miners and for the legalization of mining records; for the extension of the mining laws to the Territory of Alaska, and for the exploration and mining of tide lands and lands below low tide; and relating to the rights of Indians and persons conducting schools or missions, see page 267 of this circular.

### MINERAL LANDS WITHIN NATIONAL FORESTS.

114. The act of June 4, 1897, provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.

The act also provides that "The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by *bona fide* settlers, miners, residents, and prospectors for minerals, for firewood, fencing, building, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located."

#### Transfer of National Forests.

Act of February 1, 1905 (33 Stat., 628).

The Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March 3, 1891, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

(For further information see Use Book—Forest Service.)

### SURVEYS OF MINING CLAIMS.

#### General Provisions.

115. Under section 2334, Revised Statutes, the United States surveyor general "may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims."

116. Persons desiring such appointment should therefore file their applications with the surveyor general for the district wherein appointment is asked, who will furnish all information necessary.

117. All appointments of mineral surveyors must be submitted to the Commissioner of the General Land Office for approval.

118. The surveyors general have authority to suspend or revoke the appointments of mineral surveyors at any time, for cause, and to suspend or revoke the appointments at such times as the bonds become subject to renewal under the act of March 2, 1895 (28 Stat., 808), for reasons appearing sufficient to sustain a refusal to appoint in the first instance. The surveyors, however, will be allowed the right of appeal from the action of the surveyor general in the usual manner. The appeal must be filed with the surveyor general, who will at once transmit the same, with a full report, to the General Land Office. (20 L. D., 283; amendment approved July 29, 1911.)

119. [Omitted.]

120. Neither the surveyor general nor the Commissioner of the General Land Office has jurisdiction to settle differences relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner—i. e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

121. The surveyors general should appoint as many competent mineral surveyors as apply for appointment, in order that claimants may have a choice of surveyors, and be enabled to have their work done on the most advantageous terms.

122. The schedule of charges for office work should be as low as is possible. No additional charges should be made for orders for amended surveys, unless the necessity therefor is clearly the fault of the claimant, or considerable additional office work results therefrom.

123. [Omitted.]

124. Mineral surveyors will address all official communications to the surveyor general. They will, when a mining claim is the subject of correspondence, give the name and survey number. In replying to letters they will give the subject matter and date of the letter. They will promptly notify the surveyor general of any change in post-office address.

125. Mineral surveyors should keep a complete record of each survey made by them and the facts coming to their knowledge at the time, as well as copies of all their field notes, reports, and official correspondence, in order that such evidence may be readily produced when called for at any future time. Field notes and other reports must be written in a clear and legible hand or typewritten, in non-copying ink, and upon the proper blanks furnished gratuitously by the surveyor general's office upon application therefor. No interlineations or erasures will be allowed.

126. No return by a mineral surveyor will be recognized as official unless it is over his signature as a United States mineral surveyor, and made in pursuance of a special order from the surveyor general's office. After he has received an order for survey he is required to make the survey and return correct field notes thereof to the surveyor general's office without delay.

127. The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

128. A mineral surveyor is precluded from acting, either directly or indirectly, as attorney in mineral claims. His duty in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the surveyor general. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths to the parties in interest. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this rule, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper surveyor general a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ chainmen interested therein in any manner.

#### Method of Survey.

129. The survey made and returned must, in every case, be an actual survey on the ground in full detail, made by the mineral surveyor in person after the receipt of the order, and without reference to any knowledge he may have previously acquired by reason of having made the location survey or otherwise, and must show the actual facts existing at the time. This precludes him from calculating the connections to corners of the public survey and location monuments, or any other lines of his survey through prior surveys made by others and substituting the same for connections or lines of the survey returned by him. The term *survey* in this paragraph applies not only to the usual field work, but also to the examinations required for the preparation of affidavits of five hundred dollars expenditure, descriptive reports on placer claims, and all other reports.

130. The survey of a mining claim may consist of several contiguous locations, but such survey must, in conformity with statutory requirements, distinguish the several locations, and exhibit the boundaries of each. The survey will be given but one number.

131. The survey must be made in strict conformity with, or be embraced within, the lines of the location upon which the order is based. If the survey and location are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of survey to the corresponding corner of the location, and the location corner must be fully described, so that it can be identified. The lines of the location, as found upon the ground, must be laid down upon the preliminary plat in such a manner as to contrast and show their relation to the lines of survey.

132. In view of the principle that courses and distances must give way when in conflict with fixed objects and monuments, the surveyor will not, under any circumstances, change the corners of the location for the purpose of making them conform to the description in the record. If the difference from the location be slight, it may be explained in the field notes.

133. No mining claim located subsequent to May 10, 1872, should exceed the statutory limit in width on each side of the center of vein or 1,500 feet in length, and all surveys must close within 50-100 feet in 1,000 feet, and the error must not be such as to make the location exceed the statutory limit, and in absence of other proof the discovery point is held to be the center of the vein on the surface. The course and length of the vein should be marked upon the plat.

134. All mineral surveys must be made with a transit, with or without solar attachment, by which the meridian can be determined independently of the magnetic needle, and all courses must be referred to the true meridian. The variation should be noted at each corner of the survey. The true course of at least one line of each survey must be ascertained by astronomical observations made at the time of the survey; the data for determining the same and details as to how these data were arrived at must be given. Or, in lieu of the foregoing, the survey must be connected with some line the true course of which has been previously established beyond question, and in a similar manner, and, when such lines exist, it is desirable in all cases that they should be used as a proof of the accuracy of subsequent work.

135. Corner No. 1 of each location embraced in a survey must be connected by course and distance with nearest corner of the public survey or with a United States location monument, if the claim lies within two miles of such corner or monument. If both are within the required distance, the connection must be with the corner of the public survey.

136. Surveys and connections of mineral claims may be made in suspended townships in the same manner as though the claims were upon unsurveyed land, except as hereinafter specified, by connecting them with independent mineral monuments. At the same time, the position of any public-land corner which may be found in the neighborhood of the claim should be noted, so that, in case of the release of the township from suspension, the position of the claim can be shown on the plat.

137. A mineral survey must not be returned with its connection made only with a corner of the public survey, where the survey of the township within which it is situated is under suspension, nor connected with a mineral monument alone, when situated within the limits of a township the regularity and correctness of the survey of which is unquestioned.

138. In making an official survey, corner No. 1 of each location must be established at the corner nearest the corner of the public survey or location monument, unless good cause is shown for its being placed otherwise. If connections are given to both a corner of the public survey and location monument, corners Nos. 1 should be placed at the corner nearest the corner of the public survey. When a boundary line of a claim intersects a section line, courses and dis-

tances from point of intersection to the Government corners at each end of the half mile of section line so intersected must be given.

139. In case a survey is situated in a district where there are no corners of the public survey and no monuments within the prescribed limits, a mineral monument must be established, in the location of which the greatest care must be exercised to insure permanency as to site and construction. (See, also, provisions of par. 39b.)

140. The site, when practicable, should be some prominent point, visible for a long distance from every direction, and should be so chosen that the permanency of the monument will not be endangered by snow, rock, or landslides, or other natural causes.

141. The monument should consist of a stone not less than 30 inches long, 20 inches wide, and 6 inches thick, set halfway in the ground, with a conical mound of stone 4 feet high and 6 feet base alongside. The letters U. S. L. M., followed by the consecutive number of the monument in the district, must be plainly chiseled upon the stone. If impracticable to obtain a stone of required dimensions, then a post 8 feet long, 6 inches square, set 3 feet in the ground, scribed as for a stone monument, protected by a well-built conical mound of stone of not less than 3 feet high and 6 feet base around it, may be used. The exact point for connection must be indicated on the monument by an X chiseled thereon; if a post is used, then a tack must be driven into the post to indicate the point.

142. From the monument, connections by course and distance must be taken to two or three bearing trees or rocks, and to any well-known and permanent objects in the vicinity, such as the confluence of streams, prominent rocks, buildings, shafts, or mouths of adits. Bearing trees must be properly scribed B. T. and bearing rocks chiseled B. R., together with the number of the location monument; the exact point on the tree or stone to which the connection is taken should be indicated by a cross or other unmistakable mark. Bearings should also be taken to prominent mountain peaks, and the approximate distance and direction ascertained from the nearest town or mining camp. A detailed description of the locating monument, with a topographical map of its location, should be furnished the office of the surveyor general by the surveyor.

143. Corners may consist of—

*First.* A stone at least 24 inches long set 12 inches in the ground, with a conical mound of stone  $1\frac{1}{2}$  feet high, 2 feet base, alongside.

*Second.* A post at least 3 feet long by 4 inches square, set 18 inches in the ground and surrounded by a substantial mound of stone or earth.

*Third.* A rock in place.

A stone should always be used for a corner when possible, and when so used the kind should be stated.

144. All corners must be established in a permanent and workman-like manner, and the corner and survey number must be neatly chiseled or scribed on the sides facing the claim. The *exact* corner point must be permanently indicated on the corner. When a rock in place is used, its dimensions above ground must be stated and a cross chiseled at the exact corner point.

145. In case the point for the corner be inaccessible or unsuitable a witness corner, which must be marked with the letters W. C. in addition to the corner and survey number, should be established. The

witness corner should be located upon a line of the survey and as near as possible to the true corner, with which it must be connected by course and distance. The reason why it is impossible or impracticable to establish the true corner must always be stated in the field notes, and in running the next course it should be stated whether the start is made from the true place for corner or from witness corner.

146. The identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, and other objects, as prescribed in the establishment of location monuments, and when no bearings are given it should be stated that no bearings are available. Permanent objects should be selected for bearings whenever possible.

147. If an official mineral survey has been made in the vicinity, within a reasonable distance, a further connecting line should be run to some corner thereof; and in like manner all conflicting surveys and locations should be so connected, and the corner with which connection is made in each case described. Such connections will be made and conflicts shown according to the boundaries of the neighboring or conflicting claims as each is marked, defined, and actually established upon the ground. The mineral surveyor will fully and specifically state in his return *how* and by what *visible evidences* he was able to identify on the ground the several conflicting surveys and those which appear according to their returned tie or boundary lines to conflict, if they were so identified, and report errors or discrepancies found by him in any such surveys. In the survey of contiguous claims which constitute a consolidated group, where corners are common, bearings should be mentioned but once.

148. The mineral surveyor should note carefully all topographical features of the claim, taking distances on his lines to intersections with all streams, gulches, ditches, ravines, mountain ridges, roads, trails, etc., with their widths, courses, and other data that may be required to map them correctly. All municipal or private improvements, such as blocks, streets, and buildings, should be located.

149. If, in running the exterior lines of a claim, the survey is found to conflict with the survey of another claim, the distances to the points of intersection, and the courses and distances along the line intersected from an established corner of such conflicting claim to such points of intersection, should be described in the field notes: *Provided*, That where a corner of the conflicting survey falls within the claim being surveyed, such corner should be selected from which to give the bearing, otherwise the corner nearest the intersection should be taken. The same rule should govern in the survey of claims embracing two or more locations the lines of which intersect.

150. A lode and mill-site claim in one survey will be distinguished by the letters A and B following the number of the survey. The corners of the mill site will be numbered independently of those of the lode. Corner No. 1 of the mill site must be connected with a corner of the lode claim as well as with a corner of the public survey or United States location monument.

151. When a placer claim includes lodes, or when several contiguous placer or lode locations are included as one claim in one survey, there must be given to the corners of each location constituting the same a separate consecutive numerical designation, beginning with corner No. 1 in each case.

152. Throughout the description of the survey, after each reference to the lines or corners of a location, the name thereof must be given, and if unsurveyed, the fact stated. If reference is made to a location included in a prior official survey, the survey number must be given, followed by the name of the location. Corners should be described once only.

153. The total area of each location and also the area in conflict with each intersecting survey or claim should be stated. But when locations embraced in one survey conflict with each other such conflicts should only be stated in connection with the location from which the conflicting area is excluded.

154. It should be stated particularly whether the claim is upon surveyed or unsurveyed public lands, giving in the former case the quarter section, township, and range in which it is located, and the section lines should be indicated by full lines and the quarter-section lines by dotted lines.

155. The title-page of the field notes must contain the post-office address of the claimant or his authorized agent.

156. In the mineral surveyor's report of the value of the improvements all *actual* expenditures and *mining* improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

157. The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of five hundred dollars as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

158. All mining and other improvements claimed will be located by courses and distances from corners of the survey, or from points on the center or side lines, specifying with particularity and detail the dimensions and character of each, and the improvements upon each location should be numbered consecutively, the point of discovery being always No. 1. Improvements made by a former locator who has abandoned his claim can not be included in the estimate, but should be described and located in the notes and plat.

159. In case of a lode and mill-site claim in the same survey the expenditure of five hundred dollars must be shown upon the lode claim.

160. If the value of the labor and improvements upon a mineral claim is less than five hundred dollars at the time of survey the mineral surveyor may file with the surveyor general supplemental proof showing five hundred dollars expenditure made prior to the expiration of the period of publication.

161. The mineral surveyor will return with his field notes a preliminary plat on blank sent to him for that purpose, protracted on a scale of two hundred feet to an inch, if practicable. In preparing plats the

top is north. Copy of the calculations of areas by double meridian distances and of all triangulations or traverse lines must be furnished. The lines of the claim surveyed should be heavier than the lines of conflicting claims.

162. Whenever a survey has been reported in error the surveyor may, in the discretion of the surveyor general, be required promptly to make a thorough examination upon the premises and report the result, under oath, to the surveyor general's office. In case he finds his survey in error he will report in detail all discrepancies with the original survey and submit any explanation he may have to offer as to the cause. If, on the contrary, he should report his survey correct, the surveyor general will, if necessary, order a joint survey to settle the differences with the surveyor who reported the error. A joint survey must be made within ten days after the date of order, unless satisfactory reasons are submitted, under oath, for a postponement. The field work must in every sense of the term be a *joint* survey, and not a separate survey, and the observations and measurements taken with the same instrument and chain, previously tested and agreed upon.

Nothing contained in the foregoing paragraph shall be construed as intending to invest surveyors general with jurisdiction to try and determine purely adverse claims to mining ground, and the procedure herein prescribed shall not be resorted to in any case where it is apparent that the controversy is not one concerning the professional efficiency of the surveyor, or the accuracy of results achieved by the methods employed by him in the execution of the survey, but relates substantially to the relative merits of rival claims to the same parcel of ground.

163. The mineral surveyor found in error, or, if both are in error, the one who reported the same, will make out the field notes of the joint survey, which, after being duly signed and sworn to by both parties, must be transmitted to the surveyor general's office.

164. Inasmuch as amended surveys are ordered only by special instructions from the General Land Office, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

The expense of amended surveys, including amendment of plat and field notes, and office work in the surveyor general's office will be borne by the claimant.

165. The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

166. The field notes of the amended survey must be prepared on the same size and form of blanks as are the field notes of the original

survey, and the word "amended" must be used before the word "survey" wherever it occurs in the field notes.

167. Mineral surveyors are required to make full examinations of all placer claims at the time of survey and file with the field notes a descriptive report, in which will be described—

(a) The quality and composition of the soil, and the kind and amount of timber and other vegetation.

(b) The *locus* and size of streams, and such other matter as may appear upon the surface of the claims.

(c) The character and extent of all surface and underground workings, whether placer or lode, for mining purposes, locating and describing them.

(d) The proximity of centers of trade or residence.

(e) The proximity of well-known systems of lode deposits or of individual lodes.

(f) The use or adaptability of the claim for placer mining, and whether water has been brought upon it in sufficient quantity to mine the same, or whether it can be procured for that purpose.

(g) What works or expenditures have been made by the claimant or his grantors for the development of the claim, and their situation and location with respect to the same as applied for.

(h) The true situation of all mines, salt licks, salt springs, and mill sites which come to the surveyor's knowledge, or a report by him that none exist on the claim, as the facts may warrant.

(i) Said report must be made under oath and duly corroborated by one or more disinterested persons.

168. The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

169. The field work must be accurately and properly performed and returns made in conformity with the foregoing instructions. Errors in the survey must be corrected at the surveyor's own expense, and if the time required in the examination of the returns is increased by reason of neglect or carelessness, he will be required to make an additional deposit for office work. He will be held to a strict accountability for the faithful discharge of his duties, and will be required to observe fully the requirements and regulations in force as to making mineral surveys. If found incompetent as a surveyor, careless in the discharge of his duties, or guilty of a violation of said regulations, his appointment will be promptly revoked.

CLAY TALLMAN, *Commissioner*.

Approved August 6, 1915:

ANDRIEUS A. JONES,

*First Assistant Secretary.*

## EDITORIAL NOTE.

In connection with the foregoing regulations as printed in pamphlet form there were added, as an appendix, for information and convenient reference, reprints of the instructions of March 6, 1911, 39 L. D., 544, concerning surface rights, withdrawals, etc., under the acts of March 3, 1909, and June 22 and 25, 1910; the circular of October 21, 1912, 41 L. D., 345, under the act of August 24, 1912, concerning the exploration of lands withdrawn under the act of June 25, 1910; the instructions of October 30, 1913, 42 L. D., 474, amending rule 7 of the circular of April 24, 1907, 35 L. D., 681, 682; the instructions of November 21, 1914, 43 L. D., 459, concerning the form of applications and agreements under the act of August 25, 1914, respecting patents for oil lands in withdrawn areas; the regulations of March 20, 1915, 44 L. D., 32, under the act of July 17, 1914, governing agricultural entries of phosphate, oil, and other mineral lands; the regulations of March 31, 1915, 44 L. D., 46, under the act of January 11, 1915, validating placer locations of deposits of phosphate rock; and the instructions of July 15, 1915, 44 L. D., 195, under the act of January 11, 1915, providing for the purchase and disposal of certain lands containing kaolin, kaolinite, Fuller's earth, China clay, and ball clay, in Tripp county, formerly a part of the Rosebud Indian reservation, South Dakota.

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EARL DOUGLASS.

*Decided August 6, 1915.*

## MINERAL LAND—REMAINS OF PREHISTORIC ANIMALS.

Fossil remains of dinosaurs and other prehistoric animals are not mineral within the meaning of the United States mining laws, and lands containing such remains are not subject to entry under such laws.

JONES, *First Assistant Secretary*:

This is an appeal by Earl Douglass from the decision of the Commissioner of the General Land Office, dated July 24, 1913, holding for cancellation his mineral entry No. 04764, made April 5, 1913, at Vernal, Utah, for the Carnegie Museum placer claim, survey No. 6206, for 80 acres unsurveyed, which, it is stated, will conform to the NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  and NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 26, T. 4 S., R. 23 E., S. L. M., upon extension of the public land surveys.

The character of the deposit claimed is disclosed in the report of the mineral surveyor as follows:

This claim is adapted for mining for the fossil remains of dinosaurs and other prehistoric animals; . . . the ridge shown upon the accompanying plat as Fossil Reef, contains fossil remains of prehistoric animals throughout its

entire length upon this claim, but at no other point in such abundance as at the point at which the open cut shown upon the plat is being excavated.

The record discloses that the fossil remains of the prehistoric animals have been excavated for uses in scientific investigation. The Commissioner held that they were not subject to entry under the mining laws of the United States.

Lindley on Mines, third edition, section 98, lays down the following rules for determining the question as to whether the character of the land is mineral or not:

The mineral character of the land is established when it is shown to have upon or within it such a substance as—

(a) Is recognized as mineral, according to its chemical composition, by the standard authorities on the subject; or—

(b) Is classified as a mineral product in trade or commerce; or—

(c) Such a substance (other than the mere surface which may be used for agricultural purposes) as possesses economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts.

In that connection he cites the similar decision of this Department in *Pacific Coast Marble Co. v. Northern Pacific R. R. Co.* (25 L. D., 233).

The material here claimed is not recognized as a mineral by standard authorities on the subject. It is not classified as a mineral product in trade or commerce, nor does it possess economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts; therefore, under the rule as above laid down, it is not a mineral within the meaning of the public land laws.

The case is analogous in principle to that of *South Dakota Mining Co. v. McDonald* (30 L. D., 357), in which it was held that (syllabus):

Land not shown to contain deposits, in paying quantities, of any of the mineral substances usually developed by mining operations, but which appears to be valuable and to be desired by the parties attempting to secure title thereto chiefly because of a cave or cavern the entrance to which is situated thereon, and for the crystalline deposits, and formations of various kinds, such as stalactites, stalagmites, geodes, etc., found therein, which are made the subject of sale by the parties not as minerals but as natural curiosities, is not mineral land within the meaning of the mining laws.

The decision of the Commissioner holding that the character of the deposit here claimed is not a mineral within the meaning of the mining laws is correct and the action in cancelling the mineral entry is hereby affirmed.

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#### EARL DOUGLASS.

Motion for rehearing of departmental decision of August 6, 1915, 44 L. D., 325, denied by First Assistant Secretary Jones November 16, 1915.

## ANDRO TYMOFJCZUK.

*Decided August 6, 1915.*

## SURVEY ON APPLICATION—PREFERENCE RIGHT OF STATE—NOTICE.

The act of August 18, 1894, authorizing the survey of public lands on the application of a State, grants the State a preference right of selection for "sixty days from the date of the filing of the township plat of survey," and the governor of the State has no authority to limit the preference right period so fixed by the statute; and the fact that in a published notice under that act the governor claimed a preference right on behalf of the State for "sixty days after the survey is approved," in no wise affects the preference right of the State to make selection at any time within sixty days from the filing of the township plat.

JONES, *First Assistant Secretary*:

Andro Tymofjczuk filed motion for rehearing of departmental decision of April 29, 1915, affirming decision of the Commissioner of the General Land Office rejecting his homestead application for S.  $\frac{1}{2}$  S.  $\frac{1}{2}$ , Sec. 13; N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ , Sec. 24, T. 37 N., R. 47 E., M. M., Glasgow, Montana, for conflict with the State's indemnity school selection and preference right.

The motion insists that the State's selection is made contrary to regulations of November 3, 1909 (38 L. D., 287). The regulations referred to have no application to the case but relate to selections under the railroad-indemnity and forest-lieu selection acts for unsurveyed lands. The act of August 18, 1894 (28 Stat., 372, 394), grants a preference right to a State if it makes request for survey of a township, advances costs for such survey, and gives proper notice. The act of August 18, 1894, *supra*, provides, among other things, that the State may apply for survey of unsurveyed townships—

and the lands that may be found to fall within the limits of such township or townships as ascertained by the survey, shall be reserved upon the filing of the application for survey from any adverse appropriation by settlement or otherwise except under rights that may be found to exist of prior inception, for a period to extend from such application for survey until the expiration of sixty days from the date of the filing of the township plat of survey in the proper district land office, during which period of sixty days the State may select any such lands not embraced in any valid adverse claim, for the satisfaction of such grants, with the condition, however, that the governor of the State, within thirty days from the date of such filing of the application for survey, shall cause a notice to be published, which publication shall be continued for thirty days from the first publication, in some newspaper of general circulation in the vicinity of the lands likely to be embraced in such township or townships, giving notice to all parties interested of the fact of such application for survey and the exclusive right of selection by the State for the aforesaid period of sixty days herein provided for.

Under this statute the Governor of the State, March 3, 1910, requested survey of this and other townships. This application was received at the General Land Office March 7, 1910, and March 10,

following, notice was published in the Glasgow, Montana, weekly newspaper published at Glasgow, Montana, from and including March 10, 1910 to April 28, 1910. This notice was in the following words, so far as applicable to this township:

TO WHOM IT MAY CONCERN:

Notice is hereby given that the Governor of the State of Montana has made application to the Commissioner of the General Land Office for the survey of the following townships and public lands, to-wit:

\* \* \* \* \*

Tps. 34 to 37 N., Rgs. 43 to 47 E. inclusive.

That the State will claim the exclusive right for sixty days after the survey is approved to make selections of land in said townships, claiming the preference over any rights established subsequent to the date of the first publication hereof as provided by act of Congress approved August 18, 1894.

All persons interested are hereby notified of the application thus made by the State.

ERWIN L. NORRIS,  
*Governor of Montana.*

First publication March 10, 1910.

It is insisted that this publication was ineffective because it gave a different period for expiration of the preference right than that given in the statute. The statute gives a preference right for sixty days after filing of plat in the local land office. This notice used the words "for sixty days after the survey is approved." The question is, was the preference right lost by such error in fixing the period of termination of the preference right granted by the statute?

In the present case, the surveyor-general for the State of Montana approved the township plat September 13, 1913. It was by him transmitted to the Commissioner of the General Land Office and accepted by the Commissioner November 10, 1913, when it was transmitted to the local land office and was there filed February 4, 1914. Observing these dates, it is noticeable that if the preference right to make selection terminated sixty days after approval of the plat by the surveyor-general, the preference-right period expired November 12, 1913, before the Commissioner of the General Land Office had examined the plat or accepted it. If the preference-right period began to run from acceptance of the plat by the Commissioner, November 10, 1913, the preference-right period of sixty days expired January 9, 1914, before the approved township plat was filed in the local land office. If the notice was effective to limit the State's period of preference right, it effectually cut off that preference right and waived it altogether.

Notice required by the statutes as a condition to the existence of any preference right was that the State, within thirty days from request for survey—

shall cause a notice to be published, which publication shall be continued for thirty days from the first publication, in some newspaper of general circulation

in the vicinity of the lands likely to be embraced in such township or townships, giving notice to all parties interested of the fact of such application for survey and the exclusive right of selection by the State for the aforesaid period of sixty days herein provided for.

No statute of the United States authorizes the Governor or any other State officer to shorten the period of preference right. The period is fixed by the statute from an event named, to wit, the filing of the plat in the local land office. It is not pretended in the brief or the appeal that the Governor had any authority to limit or waive the period of the State's preference right. The notice actually published referred to the statute, gave the first day of its publication, the fact that the State had applied under the statute and pointed out the statute under which the preference right was claimed.

In view of the Department, this is all that the statute required and the naming of a different time by the Governor when the preference right would expire was surplusage to the notice and ineffectual to limit the State's period of preference right.

The powers of executive officers are only those which are committed to them by statute defining the duties of their office or which necessarily arise by implication from such duties. This rule is well supported by the concurrence of authority, both State and Federal. The Governor, therefore, had no authority in the notice of preference right, properly given and published, to limit or take away or shorten the preference right created by the statute. It therefore appears that a notice, including all that was necessary, was given within thirty days after the request for survey, the statute under which a preference right was claimed was pointed out, and this of itself carried notice that the preference right did not expire until sixty days after the filing of the approved plat in the local land office.

The State made its selections February 14, 1914, only ten days after the plat was filed, and it is held such selections were filed within proper time.

The motion is therefore overruled.

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### MARION L. BOOKOUT.

*Decided August 9, 1915.*

#### ENLARGED HOMESTEAD—ADDITIONAL—ACT OF MARCH 4, 1915.

An entry made in good faith prior to January 1, 1914, under section 3 of the enlarged homestead act of February 19, 1909, as additional to an additional entry made under section 6 of the act of March 2, 1889, is validated by the act of March 4, 1915.

JONES, *First Assistant Secretary*:

In the above-entitled case Marion L. Bookout made homestead entry No. 19489, for the S.  $\frac{1}{2}$  SE.  $\frac{1}{2}$ , Sec. 28, T. 12 N., R. 18 W., I. M., El Reno, Oklahoma, containing 80 acres, upon which patent issued

May 9, 1907. Upon October 15, 1906, he made homestead entry No. 12332 at Clayton, now Tucumcari, New Mexico, for lots 1 and 2, Sec. 1, T. 15 N., R. 34 E., N. M. P. M., containing 80.27 acres, as an additional entry under section 6 of the act of March 2, 1889 (25 Stat., 854). The land embraced in this additional entry, together with the S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  of said Sec. 1, was designated as subject to entry under the enlarged homestead law of February 19, 1909 (35 Stat., 639), May 1, 1909. Upon June 24, 1909, Bookout made further entry, Tucumcari No. 011844, of said S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , under section 3 of the act of February 19, 1909, *supra*. He submitted final proof upon the entire area so entered in New Mexico, November 28, 1911, final certificate issuing November 29, 1911.

By decision of October 19, 1912 (41 L. D., 381), the Department held that he was not qualified to make the further entry under section 3 of the enlarged homestead act, and that such further entry had not been validated by the act of August 24, 1912 (37 Stat., 506). Upon July 11, 1913, the Department directed that action be suspended pending legislation.

The act of February 19, 1909, *supra*, provides in section 4:

That any qualified person who has heretofore made or hereafter makes additional entry under the provisions of section three of this act may be allowed to perfect title to his original entry by showing compliance with the provisions of section twenty-two hundred and ninety-one of the Revised Statutes respecting such original entry, and thereafter in making proof upon his additional entry shall be credited with residence maintained upon his original entry from the date of such original entry, but the cultivation required upon entries made under this act must be shown respecting such additional entry, which cultivation, while it may be made upon either the original or additional entry, or upon both entries, must be cultivation in addition to that relied upon and used in making proof upon the original entry; or, if he elects, his original and additional entries may be considered as one, with full credit for residence upon and improvements made under his original entry, in which event the amount of cultivation herein required shall apply to the total area of the combined entry, and proof may be made upon such combined entry whenever it can be shown that the cultivation required by this section has been performed; and to this end the time within which proof must be made upon such combined entry is hereby extended to seven years from the dated of the original entry.

This provision was reenacted in section 4 of the act of March 3, 1915 (Public, No. 279, 38 Stat., 956).

The act of March 4, 1915 (Public No. 297, 38 Stat., 1162), provides as follows:

That all pending homestead entries made in good faith prior to January first, nineteen hundred and fourteen, under the provisions of the enlarged homestead laws, by persons who before making such enlarged homestead entry had acquired title to land under the homestead laws and therefore were not qualified to make an enlarged homestead entry, be, and the same are hereby, validated, if in all other respects regular, in all cases where the original homestead entry was for less than one hundred and sixty acres of land.

Under the provisions of section 4 of the act of February 19, 1909, *supra*, as reenacted by the act of March 3, 1915, it is clear that Bookout's additional entry under the act of March 2, 1889, and his further entry under section 3 of the act of February 19, 1909, can be considered as one entry. Therefore, Bookout had made an enlarged homestead entry prior to January 1, 1914, which the record discloses was made in good faith, and had made an original homestead entry in Oklahoma for less than 160 acres of land. He is, therefore, within the purview of the act of March 4, 1915 (Public, No. 297), and his entry in New Mexico has been validated thereby if his proof is otherwise sufficient.

The matter is, therefore, remanded with instructions that entries Nos. 05928 and 011844 be held intact subject to the determination of the sufficiency of his final proof.

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### SARAH E. ALLEN (On Rehearing).

*Decided August 9, 1915.*

#### RECLAMATION HOMESTEAD—SETTLEMENT—WITHDRAWAL—SCHOOL SECTION.

A settler on unsurveyed land in a school section who after survey and after withdrawal of the land under the reclamation act as susceptible of reclamation under an irrigation project was permitted to make entry for the full area of 160 acres, must conform his entry to a farm unit, but is entitled under the provisions of the act of June 23, 1910, to assign the remaining portion of his entry; and the rights acquired by such settlement and entry bar the attachment of any rights to the land on behalf of the State under its school grant.

#### CONFLICTING DECISIONS MODIFIED AND OVERRULED.

Departmental decisions of March 11, and May 13, 1912, 40 L. D., 586, 589, modified, and decision in William Boyle, 38 L. D., 603, overruled in so far as in conflict.

#### JONES, *First Assistant Secretary*:

February 14, 1906, Sarah E. Allen made homestead entry No. 38366 (04785) at Minot, North Dakota, for the SW.  $\frac{1}{4}$ , Sec. 16, T. 151 N., R. 104 W., subject to the provisions of the act of June 17, 1902 (32 Stat., 388).

She alleged settlement upon the land in June, 1901, while it was unsurveyed. After survey the land became subject to entry July 15, 1903, and on August 28, 1903, was included with other tracts in a second-form withdrawal under the act of June 17, 1902, *supra*, Williston reclamation project.

Entrywoman submitted final proof upon the entry October 6, 1906, and a protest having been filed against the entry by the State of North Dakota and a party claiming by conveyance from the State, a

hearing was held to determine the rights of the parties in interest. In decision of November 6, 1908, which became final April 15, 1909, the Commissioner of the General Land Office held that Allen had a valid settlement right which excepted the land from grant to the State in aid of common schools. April 19, 1909, pursuant to instructions from the Commissioner, the register and receiver issued final certificate, Williston No. 04785, upon Allen's entry without reference to the conditions of the reclamation act.

April 15, 1911, the Commissioner held that the action, directing the issuance of final certificate, was erroneous because the failure of entrywoman to make entry within 90 days from and after the filing of the township plat of survey, July 15, 1903, subjected her claim to the operation of the reclamation act and that final certificate could not issue until she had complied with all the requirements of that act, her entry being subject to conformation to such farm units as might be established by the Secretary of the Interior.

The Commissioner's decision was affirmed by this Department March 11, 1912 (40 L. D., 586). The land has been divided into two farm units, unit "A" covering the E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , and unit "B" covering the W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ . Said decision of March 11, 1912, affirmed the action of the Commissioner in requiring the entrywoman to elect which of the farm units she would retain, and canceling final certificate, but held that the remaining land should be treated as property in private ownership of the State or its grantee, unless the former had taken indemnity in lieu thereof. A motion for rehearing was denied May 13, 1912 (40 L. D., 589).

The Department's decision having become final, the Commissioner, July 19, 1912, canceled the final certificate and directed the register and receiver to advise the entrywoman to elect which of the two farm units she desired to retain. No action having been taken, the entry was on November 12, 1912, ordered conformed to farm unit "B," for which, it is stated, she had expressed a preference.

The entrywoman has now filed a petition for the exercise of the supervisory authority of the Department, contending that, as her settlement was held valid to except the entire 160 acres from the grant to the State, it is also sufficient to except them from withdrawal under the reclamation act.

The record establishes the fact that entrywoman made a valid homestead settlement upon the lands in question long prior to their survey and maintained such settlement until after the lands had been surveyed, until after she had made entry for the lands, and until she had submitted final proof thereupon.

The act of May 14, 1880 (21 Stat., 140), expressly recognizes the right of qualified citizens to initiate homestead claims by settlement

upon unsurveyed public lands. Section 2275, R. S., as amended by the act of February 28, 1891 (26 Stat., 796), provides:

Where settlements with a view to preemption or homestead have been or shall hereafter be made before the survey of the lands in the field, which are found to have been made on Sec. 16 or 36, those sections shall be subject to the claims of such settlers; and if such sections or either of them have been or shall be granted, reserved or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted and may be selected by said State or Territory, in lieu of such as may thus be taken by preemption or homestead settlers.

The act of Congress of February 22, 1889 (25 Stat., 676), providing for the admission of the State of North Dakota into the Union, granted sections 16 and 36 in every township to the proposed State, but expressly provided "that where such sections or any parts thereof have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto . . . are hereby granted" in lieu thereof. The reclamation law under which these lands were withdrawn August 28, 1903, authorizes and directs the Secretary of the Interior to withdraw from public entry lands required for irrigation works or lands susceptible of irrigation and reclamation under any proposed project and further directs as to any public lands believed to be susceptible of irrigation and withdrawn for that purpose—

That all lands entered and entries made under the homestead laws within areas so withdrawn during such withdrawal shall be subject to all the provisions, limitations, charges, terms and conditions of this act.

The order of withdrawal issued by the Secretary in this particular instance contained language substantially identical with the words of the statute above quoted. The reclamation law was further amended by Congress June 23, 1910 (36 Stat., 592), so as to confer upon homestead entrymen within reclamation projects who had submitted satisfactory proof of residence, improvement and cultivation for the period required by law, the right to assign—

such entries or any part thereof to other persons and such assignee upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same as provided in the said act of June 17, 1902, may receive from the United States a patent for the lands.

Allen was, as above stated, a settler upon the land prior to its survey, at the time of the reclamation withdrawal, and at the time she made homestead entry. The reclamation withdrawal did not preclude the allowance of entry based upon her settlement right to the full extent of the lands claimed, 160 acres, but her entry, having been made after date of the withdrawal, could only be made subject to all the provisions, limitations, charges, terms and conditions of the act, because, although she had, by virtue of the act of May 14, 1880, and of her settlement, acquired a right to enter the land in preference to

others and such a claim as would, if maintained, preclude the attachment of the school grant to the State, it was not such a right to prevent Congress from imposing conditions with respect to the form, manner, or effect of such entry as she might subsequently make. In enacting the statute of June 17, 1902, *supra*, Congress adopted a new policy with respect to arid lands susceptible of irrigation under works to be constructed by the United States. Such areas still remain subject to homestead entry and to such preference rights as had been acquired by Mrs. Allen through her settlement, but were subject to the further condition that entrymen must contribute their proportion of the cost of works constructed for the irrigation of the land, must reclaim one-half of the irrigable area, and must suffer the conformation or division of the lands entered into farm units of such size as the Secretary of the Interior should determine to be sufficient for the support of a family. Having in view the fact that many settlers and entrymen had, without knowledge of the size, extent or boundary of the farm units which might thereafter be established, resided upon, improved and cultivated the full 160 acres entered, Congress, by the act of June 23, 1910, *supra*, provided a method whereby such entrymen might derive some return for the expenditure and labor made by them upon tracts which might fall outside of the particular farm unit to which their entries were subsequently conformed, and authorized the assignment of such entries in whole or in part, subject to further compliance with the reclamation law by assignees.

Mrs. Allen having presented her application to enter and having been allowed to make entry after the date of the reclamation withdrawal, must conform to all the conditions, limitations and requirements of the reclamation act and is also entitled to the benefits and privileges extended by said act and amendments thereof.

Under the provisions of section 4 of the reclamation act she was properly required to conform her entry to a farm unit and under the provisions of the act of June 23, 1910, *supra*, she is entitled to assign all or a part of the remainder of her entry to another.

Congress has, by the various acts cited, protected her rights as to the entire area settled upon, improved, and cultivated. The State of North Dakota is entitled to no portion of the land in question, but is, under section 2275, R. S., and the act of February 22, 1889, *supra*, relegated to its right to indemnity therefor. Departmental decisions of March 11, and May 13, 1912 (40 L. D., 586, 589), are accordingly adhered to to the extent that they required Mrs. Allen to take one of the farm units created out of the lands embraced in her original entry, but reversed and vacated to the extent that they held the remaining land to belong to the State or its grantee.

Entrywoman having expressed a preference for farm unit "B" and her entry having been conformed thereto, such action will stand

and farm unit "A" will be held subject to her right, on or before January 1, 1916, to assign the same in the form and manner authorized by the act of June 23, 1910 (36 Stat., 592). In the event she fails to take such action, said farm unit "A" will be disposed of under the appropriate public land law.

The case of William Boyle (38 L. D., 603) so far as in conflict with the rule herein laid down will be no longer followed.

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## RIGHT OF WAY—ELECTRICAL TRANSMISSION LINES—RENTAL CHARGE.

### REGULATIONS.

DEPARTMENT OF THE INTERIOR,  
*Washington, August 11, 1915.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

The DIRECTOR OF THE GEOLOGICAL SURVEY.

DEAR SIR: Under the authority given by the act of March 4, 1911 (36 Stat., 1253, 1254), regulation 8 of the regulations under said act made and fixed by the Secretary of the Interior on the sixth day of January, 1913 (41 L. D., 454), is hereby amended to read as follows:

REG. 8. The grantee shall, unless otherwise ordered by the Secretary, pay annually in advance a rental charge of five dollars (\$5.00) for each mile or fraction of a mile in length of the right of way granted.

Unless circumstances in individual cases warrant other action, future grantees' agreements should include a stipulation for the payment of rental charge at the rate of \$5.00 per mile on or before February 1, of each year of the first decade covered by the grant. The first payment should be tendered with the signed agreement prior to the issuance of the grant. Prior grantees will be permitted to conform to the amended regulation if they so desire.

Yours very truly,

A. A. JONES,  
*Acting Secretary.*

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## STATE OF OKLAHOMA.

*Decided August 13, 1915.*

### OKLAHOMA SCHOOL LAND GRANT—INDEMNITY.

There is no provision of law under which the State of Oklahoma is authorized to select indemnity for sections 13 and 33 lost to its school land grant by reason of being otherwise reserved or disposed of.

JONES, *First Assistant Secretary:*

The State of Oklahoma appealed from decision of the Commissioner of the General Land Office of October 3, 1912, rejecting its

selection list 07611, Guthrie, for 3080 acres, described therein, as indemnity for sections 13 and 33 claimed by the State under act of March 3, 1893 (27 Stat., 612), and executive proclamation of August 19, 1893 (28 Stat., 1222, 1229), claimed to have been lost to the State.

May 2, 1912, the State filed its list in the local office, which suspended and referred it to the Commissioner of the General Land Office for action. The Commissioner found (1) many erasures and interlineations and confusion of base tracts assigned; (2) a selection list under regulations of June 23, 1910 (39 L. D., 39), can not be made for more than 640 acres and base must be assigned separately to each smallest subdivisions; (3) no certificate of non-sale of the assigned base required by paragraphs 6 and 7 of said regulations is with the papers; (4) most of the base is within the Pawnee Indian Reservation, or salt land reservations, and the Commissioner held sections 13 and 33 in those reservations did not pass by the grant and were not good base for the selection. For such reasons the Commissioner rejected the selection.

The State does not appeal from any ruling or objection, except the last, expressing intent to cure all other objections as to form by means of amendment, but insists the final objection to the selection is erroneous, and that the State is entitled to indemnity selections for sections 13 and 33, lost by reservations.

The State's claim to sections 13 and 33 initiated by executive proclamation of August 19, 1893, *supra*, which, among other things, provided that—

section 13, in each township which has not been otherwise reserved or disposed of, is hereby reserved for university, agricultural college, and normal school purposes, subject to the action of Congress; . . . section 33 in each township which has not been otherwise reserved or disposed of, is hereby reserved for public buildings.

This proclamation did not profess to be of all such numbered sections throughout the then Territory, but only of those lands then opened to entry, "which has not been otherwise reserved or disposed of." The act of March 3, 1893 (27 Stat., 612, 642, 644), reserved for school purposes only sections 16 and 36. Congress by act of May 4, 1894 (28 Stat., 71), ratified the executive reservation of August 19, 1893, *supra*, but in such ratification did not enlarge the grant or make an indemnity provision, so that no reservation or grant of sections 13 and 33, or in lieu thereof, was made of such sections not public domain at date of such proclamation. The enabling act for admission of Oklahoma into the Union, June 16, 1906 (34 Stat., 267), by section 7, granted section 16 and 36 throughout the Territory, confirmed lieu selections for indemnity theretofore made with cash indemnity for any such sections embraced in permanent reservations for national purposes. But as to sections 13 and 33, section 8 made a more limited

provision, ratifying indemnity selections theretofore made but without other lieu or cash indemnity for such sections in whatever manner lost. The two grants were thus clearly distinguished. The State may, moreover, claim indemnity for sections 16 and 36 under the general indemnity act of February 28, 1891 (26 Stat., 796), amending section 2275, United States Revised Statutes, but this act covers only loss of sections 16 and 36. J. J. Ward (32 L. D., 573, 574). It can not be construed to grant indemnity for other than sections 16 and 36, as those sections are specifically mentioned in the act and none others. Its provisions are limited to indemnity for the particular sections mentioned. No right of indemnity has been granted as to sections 13 and 33 lost by prior grant. Only those sections not then disposed of or reserved were granted.

The decision is affirmed.

### NICHOLSON v. WAGONER.

*Decided August 13, 1915.*

#### CONSTRUCTIVE RESIDENCE—ELECTION TO PUBLIC OFFICE.

The mere election of a homestead entryman to public office, and the taking of the oath of office thereunder, does not *ipso facto* carry with it exemption from residence upon the homestead; but where the entryman can reside upon his claim continuously, or at frequent intervals, and at the same time perform the duties of his office, he should do so as an evidence of his good faith, and where his good faith is thus shown he may be given credit, under the five-year law, for constructive residence during such periods as he is necessarily absent in the performance of the duties of his office.

#### JONES, *First Assistant Secretary*:

George E. Wagoner has appealed from the decision of the Commissioner of the General Land Office rendered February 17, 1915, in the above entitled case reversing the decision of the local officers and holding for cancellation his homestead entry 06945, made August 12, 1911, under the Kinkaid Act, for the S.  $\frac{1}{2}$ , S.  $\frac{1}{2}$  N.  $\frac{1}{2}$ , Sec. 4, and N.  $\frac{1}{2}$  S.  $\frac{1}{2}$ , Sec. 5, T. 20 N., R. 28 W., 6th P. M., Broken Bow, Nebraska, land district.

It appears from the record that on March 17, 1914, one Elmer J. Nicholson filed contest affidavit against the Wagoner entry, alleging in substance that Wagoner had not resided on said land since the date of entry; that he had failed to improve the same as required by law; that the only improvement on the land consisted of a small sod house without windows, and in poor condition; that defendant had never inhabited said house; that his house was not habitable the year round and is not protected from cattle; that the defendant had never in good faith lived on or improved said land; and that the de-

fendant was unmarried and resided at Stapleton, Nebraska, and not on his homestead.

Hearing was had May 21, 1914, upon the charges preferred at which each of the parties appeared and submitted testimony.

Appellant at the hearing set up as a defense that he was duly elected to the office of county surveyor of Logan County, in which the land is situate, on November 7, 1911; that he qualified as such county surveyor on January 1, 1912, and was holding that office at the date of the hearing; and contended that his duties as county surveyor were such as to require his presence in other localities and that he, as a duly qualified public official of the county, under such circumstances, should have been given credit for constructive residence and that the contest of Nicholson should be dismissed.

The Commissioner in his decision reviewed at length and correctly stated the facts in the case as shown by a reexamination of the record on this appeal.

The testimony shows that the latter part of August, 1911, appellant placed on the land a shack 12 by 14 feet, covered with boards and tar paper, with three windows, one door and no floor other than the ground upon which it was built; that about April 13, 1912, he built another frame house 14 by 16 feet, and about September 30, 1912, built a third house of the same dimensions as the latter. These were the only improvements placed upon the land up to the date Nicholson brought contest proceedings. A careful examination of the record, however, justifies the finding of fact that these two last mentioned houses, so to speak, were nothing other than a reconstruction of the first shack, the same material used in the original house serving for the purpose of the reconstruction. Appellant further states that the only other act performed by him in the way of improvements on the land was in the latter part of March, 1914, when he put a fence around the 14 by 16 foot shack to preserve it from future destruction by roaming cattle rubbing against it, on which account he was twice compelled to reconstruct the first shack as above stated.

It appears that at the date of the initiation of this contest the defendant was maintaining his residence at a place other than on his homestead and had done so since date of entry, with the possible exception of a few days when he constructed the first shack in August, 1911, and reconstructed it in 1912, appellant, as hereinbefore stated, contending that he having qualified as county surveyor in January, 1912, was excused from actual residence on the land.

The Department, in passing upon entries and proofs made under the five year homestead law, has held that absences made necessary by official duties may be excused, provided such duties devolved upon the entryman subsequently to the making of the entry and the establishment of residence upon the land, but it is not sufficient to show that

the entryman held an office the duties of which had to be performed at some place other than the land embraced in the entry. It must appear that his absence was due to his official position or employment, and if this be not shown, the fact that he held such official position constitutes no sufficient excuse for his absence from the land. (34 L. D., 30.)

It is material, therefore, to a proper disposition of this case to determine whether appellant's absence from the land has been shown to have been due to his official position.

The Department deems it necessary, in view of the fact that the testimony of appellant at the hearing reveals that it was his intention to make proof under the act of June 6, 1912 (37 Stat., 123), known as the three year homestead law, to state that constructive residence is not permissible under the act last cited, the Department in the case of Edward Gardner (42 L. D., 615), holding:

The act of June 6, 1912, contemplates and requires the maintenance by an entryman of *actual* residence upon the land entered for at least seven months each year for three years; and this statutory requirement precludes the land department from extending the privilege of constructive residence during such periods on account of absence due to election to office or for any other reason.

The mere fact that one may have been elected to a public office, such election or oath of office thereunder does not *ipso facto* carry with it exemption from residence on the claim by the party so elected, even under the five-year homestead law. The facts in each particular case alter the circumstances and if one so elected can reside on his claim continuously and at the same time perform the duties of the office to which he has been elected he must necessarily meet the requirements of the homestead law respecting residence; or, if not inconsistent with the duties of the office to which he has been elected, such as in this case, where the entry was made prior to the passage of the act of June 6, 1912, *supra*, and proof is to be offered under the five-year homestead law, if claimant is in a position to reside on the land at frequent intervals he should do so as evidence of his good faith and will be given credit, under the five year law, for constructive residence for such periods as actually engaged in performance of his duties as a public official.

The Commissioner held, and properly so, that appellant as county surveyor was not compelled under the laws of the State of Nebraska to hold office at the county seat, or any other specified place. It is shown that Wagoner established his office in Stapleton, a railroad station about 18 miles from the land involved, being of the opinion that Stapleton was the most accessible town in the county, being the terminus of the Union Pacific Railroad.

The Department concludes that appellant was not required to be continuously absent from his claim merely because he was elected

county surveyor, particularly in view of the fact that his presence or residence at any given particular place was not required by the laws of the State and his continued absence was not warranted by the duties of the office he held. It is manifest that the house erected on the land was not fit for habitation even though appellant had desired to reside on the land when not actually engaged in survey work. This case reveals a mere pretense of compliance with the requirements of the homestead laws by Wagoner.

Under the circumstances the Department concurs in the conclusion reached by the Commissioner and the decision appealed from is hereby affirmed.

### McKITTRICK OIL COMPANY.

*Decided August 13, 1915.*

#### PLACER MINING LOCATION—VALIDITY.

A placer location made in good faith by an association of persons who subsequently form themselves into a corporation for the purpose of developing the property, each owning stock in the corporation, to which the location is conveyed, in proportion to his interest in the claim, is not invalid, there being no evidence that such location was made in the interest of and with a view to enabling the corporation to acquire a greater area of mineral ground than may lawfully be embraced in a single location by a corporation.

#### JONES, *First Assistant Secretary*:

This is an appeal by the McKittrick Oil Company from the Commissioner's decision of March 27, 1914, directing the institution of adverse proceedings under circular of January 19, 1911 (39 L. D., 458), against its mineral entry 0488 for the California Oil Company No. 28 placer claim, embracing lots 1 and 2 and the S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 1, T. 30 N., R. 21 E., M. D. M., Visalia land district, California.

The claim which, it appears, includes an area of 101.64 acres, purports to have been originally located September 19, 1899, by T. E. Harding, J. E. Yancey, H. A. Jastro, J. M. Jameson, and C. (Celsus) Brower and was, by deed acknowledged December 2, 1899, by the above-mentioned persons and twelve others, conveyed to the McKittrick Oil Company. June 2, 1903, a second purported location of the ground, under the same name as that above given, was made by H. A. Jastro, S. P. Wible, J. M. Jameson, L. C. Ross, W. T. Davis and C. Brower who, by deed dated July 7, 1903, conveyed to the applicant company. December 28, 1904, the company presented an application for patent to the claim which application was forthwith rejected by the local officers for the reasons stated in the case of McKittrick Oil Company *v.* Southern Pacific Railroad Company (37 L. D., 243) and which have no relation to the merits of the present case. That action, however, was reversed by the decision above cited, and

it was directed that, in the absence of any other objection, the application be accepted. Thereupon, the local officers accepted the application and publication and posting have been had, proof submitted, and payment made; entry was allowed May 16, 1910. By decision of August 9, 1913, in McKittrick Oil Company (42 L. D., 317), the Department further directed that the entry so allowed be passed to patent, if the proof were found to evidence a satisfactory compliance on the part of the claimant with the requirements of the mining laws.

By the decision here appealed from, the Commissioner advised the local officers that, under date of December 26, 1913, a special agent of his office submitted an adverse report on the claim and instructed them to proceed against the entry and, in the notice, to state that a special agent of the office charged as follows:

1. That the location of the California Oil Company No. 28 placer claim, for lots 1 and 2 and the S.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 1, T. 30 S., R. 21 E., M. D. M., by T. E. Harding, J. E. Yancey, H. A. Jastro, J. M. Jameson and C. Brower, as a purported association, was, in fact, made in the interest and for the sole use and benefit of the McKittrick Oil Company, a corporation, through the use and employment, with their full knowledge and consent, of the names of the alleged locators; with the purpose and intent, by such device, fraud and concealment, to secure thereby, unlawfully in fraud of the law and direct violation of Sec. 2331 of the Revised Statutes, a greater area of mineral ground than may be lawfully embraced in a single location by a corporation.

2. That T. E. Harding, J. E. Yancey, H. A. Jastro, J. M. Jameson and C. Brower did not in good faith locate and file location notice for the above-described placer claim with the intent that legal title to the land embraced in said claim should be acquired pursuant to the laws of the United States governing the location, entry or disposition of public lands valuable as placer ground, for their separate and several use and benefit, but each of the above-named persons made location and filed location notice, pursuant to an unlawful agreement and understanding, either expressed or implied, entered into by each and every one of the above-named persons, whereby the said location was made and location notice filed in the interest and for the use and benefit, in whole or in part, of the McKittrick Oil Company, a corporation, to secure by the aforesaid agreement and device, unlawfully and in violation of Sec. 2331 of the United States Revised Statutes, to the said McKittrick Oil Company, a corporation, the control and apparent possessory right to an amount of mineral land in excess of the area that may be lawfully embraced in a single location by a corporation.

3. That the location of the California Oil Company No. 28 placer claim, for lots 1 and 2 and the S.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 1, T. 30 S., R. 21 E., M. D. M., by H. A. Jastro, S. P. Wible, J. M. Jameson, L. C. Ross, W. T. Davis and C. Brower, as a purported association, was, in fact, made in the interest and for the sole use and benefit of the McKittrick Oil Company, a corporation, through the use and employment, with their full knowledge and consent, of the names of the alleged locators, with the purpose and intent, by such device, fraud and concealment, to secure thereby unlawfully, in fraud of the law and direct violation of Sec. 2331 of the Revised Statutes, a greater area of mineral ground than may be lawfully embraced in a single location by a corporation.

4. That H. A. Jastro, S. P. Wible, J. M. Jameson, L. C. Ross, W. T. Davis and C. Brower did not in good faith locate and file location notice for the above-

described placer claim with intent that the legal title to the land embraced in said claim should be acquired pursuant to the laws of the United States governing the location, entry or disposition of public lands valuable as placer ground, for their separate and several use and benefit, but each of the above-named persons made location and filed location notice pursuant to an unlawful agreement and understanding, either expressed or implied, entered into by each and every one of the above-named persons, whereby the said location was made and location notice filed in the interest and for the use and benefit, in whole or in part, of the McKittrick Oil Company, a corporation, to secure by the aforesaid agreement and device, unlawfully and in violation of Sec. 2331, United States Revised Statutes, to the said McKittrick Oil Company, the control and apparent possessory right to an amount of mineral land in excess of the area that may be lawfully embraced in a single location by a corporation.

It appears from the record in the case that the company is relying primarily upon the location of 1899 and not upon that of 1903, which is made the subject of charges 3 and 4, above named. It is obvious that this purported location was made with a view to correcting the defect apparent in the location of 1899, on account of the fact that such area was in excess, to the extent of 1.64 acres, of the area that five persons could properly locate under the provisions of the placer mining laws. It is admitted by the company that this purported location was sought to be made by the six persons whose names were subscribed to the certificate of location in the interest of the McKittrick Oil Company, which was then the owner of the ground under the previous location. This was apparently deemed to have been rendered necessary because of the Department's holding in Chicago Placer Mining Claim (34 L. D., 9), to the effect that the rule of approximation permitted in entries under the homestead and other public-land laws providing for the disposal of nonmineral lands, has no application to locations and entries under the mining laws. By the decision of the Department, however, of October 3, 1913, in Ventura Coast Oil Company (42 L. D., 453), the case of Chicago Placer Mining Claim, *supra*, was overruled, the Department there holding the rule of approximation to be applicable to placer mining locations and entries upon surveyed lands, to be applied on the basis of 10-acre legal subdivisions. It is unnecessary therefore to further consider said charges 3 and 4 in the determination of this case.

Charges 1 and 2 appear to have had their foundation on the report of December 26, 1913, submitted by a special agent of the General Land Office, which, in turn, would seem to have been predicated exclusively upon statements contained in affidavits obtained by him from the above-mentioned C. Brower, J. M. Jameson, W. T. Davis, S. P. Wible, L. C. Ross and J. E. Yancey.

From these affidavits it appears that sixteen persons, namely, T. E. Harding, C. Brower, M. S. Waggy, T. A. Baker, S. G. Druillard, H. J. Whitney, W. T. Davis, Thomas E. Taggart, H. A. Jastro, S. P.

Wible, J. M. Jameson, F. E. Tracy, Alfred Harrell, E. R. Jameson, J. E. Yancey and T. J. Packard became, in the latter part of September, 1899, interested as locators thereof under the placer mining laws in certain tracts in the vicinity of McKittrick, California, including the ground here in question. H. J. Packard was also named as a locator of at least three of the claims but, on October 17, 1899, he conveyed his interest in the locations in connection with which his name appears to the said T. A. Baker and E. J. Jameson, leaving the sixteen persons first above named as the sole claimants of the tracts under their respective locations. Of these sixteen persons, Jastro, J. M. Jameson, Harding, Yancey and Brower were the nominal locators of the California Oil Company No. 28 claim which, as above stated, purported to have been located September 19, 1899.

It appears from the averments contained in said affidavits that the several locations, made by said sixteen persons (the names of not more than eight of whom were subscribed to any of the respective certificates of location) were made with the understanding that each of said locators would have an equal interest in all of the land so located by them and that it was the intention and understanding of all of said sixteen persons that a corporation would be organized by them for the purpose of developing the claims, and that to such company when organized the claims would be conveyed, the stock of the corporation to be distributed among said persons according to their respective interests in the land to be conveyed. November 14, 1899, a preliminary meeting of the locators of said lands was held at Bakersfield, California, for the purpose of taking steps to form themselves into a corporation to be organized under the laws of California. Those present at said meeting were H. A. Jastro, T. E. Harding, H. J. Packard, S. P. Wible, J. M. Jameson, J. E. Yancey, H. J. Whitney, S. G. Druillard, M. S. Wagy, T. A. Baker, W. T. Davis, C. Brower and E. R. Jameson. Harding, Wible, J. M. Jameson and Brower were appointed a committee to prepare and file articles of incorporation and these persons together with Jastro, Harrell, and Whitney were selected as the directors of the proposed corporation for the first year. The corporation, which was named the McKittrick Oil Company, was capitalized in the sum of \$500,000, the capital stock consisting of 500,000 shares, of a par value of \$1 per share. One-third of this stock was to be retained in the treasury for sale for developing and operating expenses, the remainder to be issued to the original subscribers severally in proportion to their respective interests in the lands to be conveyed. The articles of incorporation were filed November 16, 1899. At a meeting held November 20, 1899, the persons above named, except Druillard and E. R. Jameson, each subscribed for 21,000 shares of the stock. Druil-

lard and E. R. Jameson appear to have disposed of half of their respective interests to, respectively, R. R. Waggy and the firm of Anderson & Ross, and each of these four subscribed for 10,500 shares of the stock. These subscriptions amount, approximately, to two-thirds of the capital stock. Since the date of the organization of the corporation, Jastro and Wible have been president and vice-president, respectively, of the company, and, on November 19, 1902, the board of directors consisted of Jastro, Wible, J. M. Jameson, Davis, H. J. Packard, Ross and Brower.

In the case of *Borgwardt et al. v. McKittrick Oil Co.* (130 Pac., 417), involving two locations, adjoining the tract here in question, embraced in California Oil Company Nos. 30 and 31 placer claims made by fifteen of the sixteen persons whose names appear hereinabove as locators, the court said:

We see no reason to doubt the validity of the locations of defendant's predecessors, made in the year 1899. The 16 locators located the claims solely for their own individual benefit, and not as mere agents for the benefit of some other person or of some corporation in which they had no interest. The defendant corporation, to which it was proposed to transfer the claims, was to be one in which they were to be the sole stockholders, each to own one-sixteenth of the stock. As said in appellant's brief: "This is no case of dummy locators, lending their names to any person or any corporation for the purpose of permitting it to acquire lands. This is a case of 16 men locating, in apparent good faith, lands within the limit of the amount allowed to them, and adopting a corporate management as an appropriate means of regulating and handling their joint interests, and each retaining, through the agency of the corporation, the exact interest in the land which he acquired under his location." The authorities cited by the respondents in this regard, have no application to such a situation, but refer to cases where a location is made by so-called "dummy locators," persons who simply loan their names as locators and act simply as the agents or employes of some person or corporation to whom they are to transfer their interest. Our own case of *Mitchell v. Cline*, 84 Cal., 409, 24 Pac., 164, cited by respondents, is one of such cases. There, as said by the court, three of the locators of one claim and five of another were "sham locators," not pretending to have any interest in the claim. "They merely permitted their names to be used as locators to enable their friends to obtain possession of and patent for more mineral land than they were entitled to by law; and they executed conveyances to such friends without any valuable or lawful consideration therefor." This was held to be contrary to the policy and object of the United States law limiting the quantity of placer mineral land, which may be located by one person. In *Cook v. Klonos*, 164 Fed., 529, 90 C. C. A., 403, the question, as stated by the court, was "whether an individual can, by the use of the names of his friends, relatives, or employes, as dummies, locate, for his own benefit, a greater area of mining ground than that allowed by law." No reason is advanced or can be conceived why such a practice, as was adopted in the case at bar, can be held to be violative of any statute, rule, or policy relating to the disposition of mineral lands, and we know of no ruling to the effect that it is forbidden. See, in this connection, *Lindley on Mines*, Sec. 228.

The identity of the sixteen locators to whom the court refers is not disclosed in the decision. Considering the facts therein detailed, however, in the light of the circumstances shown by the records before the Department, there can be no doubt that the court had in mind the sixteen persons hereinabove named, who appear as locators of one or more of the several claims located near McKittrick, in September, 1899, including the one here in question as well as the California Oil Company Nos. 30 and 31 claims, involved in the court proceeding. The Department is of the opinion that, on the state of facts thus shown, the ruling of the court to the effect that the acts described did not constitute a violation of any of the mining statutes, is sound. It must be accordingly held that there is nothing disclosed in the report of the special agent, or any of the affidavits upon which such report is apparently exclusively based, which, if established as the result of a hearing, would support the charge that the locations here in question were made for the benefit of any person or persons other than the sixteen locators above named, all of whom might, in fact, have joined in the making of a location without in any wise affecting its validity. While no discovery of mineral, within the limits of the claims, is alleged to have been made until August 26, 1901, this fact would not, in view of the provisions of the act of March 2, 1911 (36 Stat., 1015), affect the patentability of the claims. In the absence therefore of any reasons other than those detailed in the report of the special agent, the Department is of the opinion that the entry should be passed to patent.

On the present record, the decision is reversed and the protest dismissed.

By letter of June 15, 1914, counsel for the company have requested that they be permitted to present the case orally before the Department. In view of the conclusion reached, however, oral argument would be unnecessary.

### STATE OF IDAHO v. O'DONNELL.

*Decided August 14, 1915.*

#### APPLICATION FOR SURVEY—PREFERENCE RIGHT OF STATE—SETTLEMENT.

A State secures no preference right of selection by virtue of an application for survey under the act of August 18, 1894, until withdrawal is made for its benefit; and a settlement subsequent to an application for survey and prior to such withdrawal defeats any right of selection on the part of the State.

JONES, *First Assistant Secretary*:

The State of Idaho has appealed from the decision rendered on October 17, 1913, by the General Land Office, in which its school

PROPERTY OF THE  
LAND OFFICE.

indemnity lieu selection list, Lewiston 02920, was held for rejection as to lots 3 and 4, and SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 18, T. 42 N., R. 5 E., B. M., for the reason that it fatally conflicted with the prior homestead entry, Lewiston 02639, made by Edward O'Donnell for those tracts and the NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  of said section.

On July 5, 1901, the State, under the act of August 18, 1894 (28 Stat., 394), presented an application for the survey of the township mentioned and other townships, and the Commissioner of the General Land Office at first declined to make any withdrawal of the land for the benefit of the State, but later, on January 20, 1905, withdrew the lands under that act.

With his application to enter O'Donnell filed an affidavit alleging settlement on the land in 1903, and in his final proof, made July 1, 1914, without protest or appearance by the State, he makes statements which indicate that the settlement was amply maintained.

These controlling facts render it unnecessary to here consider the validity, force and effect of the State's selection other than as it is affected by O'Donnell's entry, and make it unnecessary to here give consideration to any of the grounds urged by the State (none of which question the entryman's qualifications to make the entry, or his good faith in making and maintaining it) further than to say that the contention that the entry was invalid because the lands were, on November 6, 1906, embraced within, and are now a part of, a national forest, is without weight, since the Proclamation creating that reserve (34 Stat., 3256), specifically declared that it would not affect lands "covered by prior valid claims," and O'Donnell's existing rights as a settler at that time gave him the right to enter the land, notwithstanding the creation of a national forest.

The fact that the settlement was made after the State presented its application for a survey did not prevent O'Donnell's rights as a settler from attaching to the land, since the State gained no preferred right to select any lands in that township until the withdrawal was made for its benefit on January 20, 1905, as was held by this Department in its unreported decision, rendered September 4, 1914, in the case of *George A. McDonald v. Northern Pacific Ry. Co. et al.* (D-15548).

The decision appealed from is therefore affirmed, and the record returned to the General Land Office with instructions that appropriate action be taken under O'Donnell's entry, and that as soon as it has been finally determined that acceptable proof has been, or is hereafter, made by him, the selection will be finally rejected; or if such proof is not made and the entry is finally canceled, such action will be taken on the selection as the facts involved seem to warrant, without reference to this decision.

## JOSEPH B. LESSMAN.

*Decided August 14, 1915.*

## SCHOOL GRANT—DESERT ENTRY ON UNSURVEYED LAND—INDEMNITY.

A desert entry of unsurveyed land, made at a time when the desert land law permitted entries of unsurveyed lands, is a disposition of the land within the meaning of section 4 of the Idaho admission act of July 3, 1890, and the act of February 28, 1891, providing indemnity for sections sixteen and thirty-six, granted for school purposes, where said sections or parts thereof have been "otherwise disposed of."

JONES, *First Assistant Secretary*:

Joseph B. Lessman appealed from decision of the Commissioner of the General Land Office, dated October 26, 1910, holding for cancellation his desert-land entry for the NE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , and SW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 16, T. 9 S., R. 5 W., Boise, Idaho, land district, on the ground that the land was granted to the State for school purposes.

January 8, 1904, Lessman made entry for the land, then unsurveyed. The survey of the township was executed May 16 to June 30, 1908, and the plat of survey filed in the local land office July 31, 1909. Final proof upon the entry was submitted and final certificate issued October 22, 1909.

The action of the Commissioner was upon the theory that the land passed to the State of Idaho under its school grant, and the case of *Noyes v. Montana* (29 L. D., 695) was cited as authority for the ruling made. Section 4 of the act of July 3, 1890 (26 Stat., 215), providing for the admission of the State of Idaho into the Union, is, in part, as follows:

That sections numbered sixteen and thirty-six in every township of said State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior.

The act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276, Revised Statutes, provided for the selection of indemnity by States having school grants—

where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States.

In the decision in the case of *Noyes v. Montana*, *supra*, it would appear that the Department failed to mention or give effect to the provision of the statute providing for the taking of indemnity by the several States in the event that the sections in place shall have

been "otherwise disposed of." This provision appears, as already set forth, in the act admitting Idaho into the Union, and in the general act of February 28, 1891, to evidence an intention on the part of Congress to protect the claims or rights of persons whom the United States had permitted to acquire and improve lands prior to their identification by survey. See in this connection departmental decision of April 14, 1915, in the case of *Fannie Lipscomb v. the State of Montana*.

In the case at bar it appears that the entry was made for unsurveyed land several miles from any existing public surveys and at a time when the desert-land law authorized and permitted the improvement and entry of unsurveyed public lands. Under the desert-land law as it existed at date of the school grant to Idaho, and at time of initiation of this claim, qualified persons could make desert-land entries, place improvements upon the land, reclaim it, and submit final proof, but could receive no certificate or patent until the identification of the lands by survey and the adjustment of the claim to the approved surveys. In the opinion of the Department, however, it was clearly a disposition of the land within the meaning and intent of the acts of July 3, 1890, and February 28, 1891, *supra*, and is therefore superior to the claim of the State, the latter being relegated to its right of indemnity for the land so disposed of.

Accordingly, and in view of the foregoing, the decision of the Commissioner is reversed, and in the absence of other objection desert-land entry 0551 will be passed to patent.

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### CYRUS G. LOWRY.

*Decided August 17, 1915.*

#### SCHOOL INDEMNITY SELECTION—COAL LAND WITHDRAWAL.

Where homestead entry was allowed for a tract of land within a school section, in the belief that it was excepted from the school grant by reason of a claimed settlement by the entryman, and the State thereupon filed an indemnity selection based thereon, and it was subsequently found that the claimed settlement was not sufficient to except the tract from the grant, the indemnity selection may nevertheless be approved where the lands have been reported and withdrawn as valuable for coal.

*JONES, First Assistant Secretary:*

Cyrus G. Lowry has appealed from decision of April 11, 1913, by the Commissioner of the General Land Office, holding for cancellation in part his homestead entry because of conflict with the school grant to the State of Montana.

October 27, 1910, Lowry made homestead entry under the enlarged homestead act of February 19, 1909 (35 Stat., 639), for the N.  $\frac{1}{2}$  NE.

$\frac{1}{4}$ , SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$ , Sec. 16, SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 9, T. 23 N., R. 56 E., M. M., Glasgow, Montana, land district. Final proof was submitted April 18, and final certificate was issued April 21, 1911.

Said township was surveyed in the field from August 22 to 27, 1908, and the plat was approved December 7, 1909, and officially filed in the local land office September 5, 1910. All of the land in said township was designated as subject to the enlarged homestead act May 1, 1909.

The claimant alleged settlement upon his original claim on October 10, 1905. It is indicated by the record that his original settlement claim embraced the SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 9, and N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , and SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 16, said township. He adds that after designation of the lands under the enlarged act he extended the claim to the additional lands, apparently the NW.  $\frac{1}{4}$  of said Sec. 16.

By his letter of September 15, 1911, the Commissioner directed the local officers to notify the proper State authority that the State would be allowed thirty days from notice within which to show cause if any why said entry should not remain intact, or to apply for a hearing to determine the rights of the State and of the entryman to the lands claimed in Sec. 16.

November 6, 1911, the local officers transmitted evidence of service upon the Register of State lands, and reported that no action had been taken by the State.

It also appears that on June 26, 1911, the State filed in the local land office indemnity selection list for lands in lieu of the SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  and NW.  $\frac{1}{4}$  of Sec. 16, on account of loss by alleged settlement claim, which selection is pending in the General Land Office.

By decision of April 11, 1913, the Commissioner held that prior to the act of Congress of August 9, 1912 (37 Stat., 267), there was no authority of law by which a settler could claim more than 160 acres, citing the case of *Cate v. Northern Pacific Railway Company* (41 L. D., 316). He accordingly held the entry of Lowry for cancellation for the lands in excess of 160 acres, allowing him to retain the tract embracing his residence and improvements not exceeding 160 acres.

The case cited by the Commissioner was overruled by the later departmental decision of *Northern Pacific Railway Company v. Morton* (43 L. D., 60). But this case may be disposed of without reference to the question of settlement rights as to the enlarged area.

It appears that this land is contained in coal withdrawal by Executive order of July 9, 1910. It does not appear as yet to have been classified as coal land, but in view of the reported character of the land, and the said withdrawal in view thereof, and considering the further fact that the State has tendered the NW.  $\frac{1}{4}$  as base for indemnity selection, it is believed that the selection should be ap-

proved, if otherwise proper. It would appear that the original settlement of Lowry upon the other tracts in Sec. 16 defeated the State's claim thereto, and, therefore, that the entry of Lowry in its entirety should remain intact. It is observed that the final certificate has been noted to the effect that the patent is to contain provisions, reservations, conditions, and limitations of the act of June 22, 1910 (36 Stat., 583), which is proper in view of the alleged coal-bearing character of the land.

For the reason stated the action of the Commissioner is reversed.

**SUGGESTIONS TO UNITED STATES COMMISSIONERS AND JUDGES  
AND CLERKS OF COURTS OF RECORD, UNDER SECTION 2294,  
R. S.**

**CIRCULAR.**

[No. 433.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., August 23, 1915.*

The following is a revision of the circular of March 24, 1905 (33 L. D., 480), the paragraphs amended being those numbered 2, 8, 9, and 10. A new paragraph 13 is inserted, and former paragraph 13 is now numbered 14.

1. No oath in support of any application, entry, proof, or claim to public lands should be administered to any stranger until he has first been reliably made known and identified to the officer administering it as the identical person he represents himself to be.

2. No jurat or certificate should be attached to any oath, affidavit, application, proof, or other written statement affecting public lands until such oath, affidavit, application, proof, or statement has been fully written out and completed, and until all blank spaces in any blank form prescribed or used therefor shall have been fully filled out or erased, and not then until after the same has been sworn to and signed by the affiant before and in the presence of the attesting officer and fully read by or made known to the affiant. No certification of papers will be recognized by the Land Department in the absence of a seal duly impressed by the officer.

3. Final proofs should in every case be made at the time and place advertised, and before the officer named in the notice, at his regularly established office or place of business, and not elsewhere. Between the hours of 8 a. m. and 6 p. m. on the day advertised the officer named in the notice should call the case for hearing, and should the claimant fail to appear with his witnesses between those

hours, or the taking of the proof fail to be completed on that day, the officer should continue the case until the next day, and on that day or any succeeding day should the claimant or his witnesses fail to so appear he should proceed in like manner to continue the case from day to day until the expiration of 10 days from the date advertised, but proof can not be taken after the expiration of the tenth day. Upon continuing any case in the manner indicated the officer continuing the same should in the most effective way available give notice of such continuance to all interested parties.

4. Protestants, adverse claimants, or other persons desiring to be present at the taking of any proof for the purpose of cross-examining the claimant and his witnesses, or to submit testimony in rebuttal should be allowed to appear for that purpose on the day advertised, or upon any succeeding day to which the case may be continued. If any person appears for the purpose of filing a formal protest against the acceptance or approval of the proofs or contest against the entry and does nothing more than file same, such protest or contest should be received and forwarded to the register and receiver for their consideration and action.

5. All final proofs should be reduced to writing by or in the presence of and under the supervision of the officer taking them, and in all cases where no special agent or other representative of the Government appears for the purpose of making cross-examinations the officer taking the proof should use his utmost endeavor and diligence so to examine the entryman and his witnesses as to obtain full, specific, and unevasive answers to all questions propounded on the blank forms prescribed for the taking of such proofs, and in addition to so doing he should make and reduce to writing and forward to the register and receiver with the proof such other and further rigid cross-examination as may be necessary clearly to develop all pertinent and material facts affecting or showing the validity of the entry, the entryman's compliance with the law, and the credibility of the claimant and his witnesses. And, in addition to this, he should inform the register and receiver of any facts not set out in the testimony which in his judgment, cast suspicion upon the good faith of the applicant or the validity of the entry.

6. The testimony of each claimant should be taken separate and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separate and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state in and as a part of the final proof testimony given by them that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

7. Officers taking affidavits and testimony should call the attention of parties and witnesses to the laws respecting false swearing and the penalties therefor and inform them of the purpose of the Government to hold all persons to a strict accountability for any statements made by them.

8. The officer who has taken a proof should, after duly certifying the papers, promptly transmit them to the register and receiver. In no case should the transmittal thereof be left to the claimant.

9. No fee in excess of 25 cents can be lawfully charged or received for administering the oath to any affidavit, application, proof, or any other written statement affecting public lands; but there is no restriction on the fee the officer may charge for preparation of any paper, except that the total amount to be received for taking and writing out the final proof testimony of a claimant or of a witness, and administering the oath thereto, shall not exceed the sum of \$1. Any officer demanding or receiving greater sums than are here specified for such services will be subject to indictment and punishment under amended section 2294 of the United States Revised Statutes.

10. No officer who takes an application, affidavit, or final proof in a case will be permitted to act as attorney therein. No United States commissioner will, while holding that office, be recognized or permitted to appear as an agent or attorney for others in any matter pending before the Land Department affecting the title to public lands, nor will he be permitted to enroll himself as agent or attorney to practice before it.

11. No officer authorized to take final proofs shall, directly or indirectly, either as agent, attorney, or otherwise, in any manner or by any means cause, aid, encourage, induce, or assist any person wrongfully or illegally to acquire, or attempt to acquire, any title to, interest in, use of, or control over any public lands belonging to the United States.

12. No officer authorized to take final proofs should, either for himself or as agent, attorney, or representative of another, induce or attempt to induce any owner, entryman, or other person to purchase, sell, mortgage, exchange, lease, or relinquish any lands which are involved, may be involved, or have been involved in any affidavit, application, or proof, executed before him, and he should not, either for himself or as agent for any other person, in any manner solicit or make to any entryman, owner, or claimant any loan or attempted loan the payment of which is to be secured by a lien or mortgage upon such lands; and he should not be or remain a member or stockholder of any copartnership or company which shall, either directly or indirectly, be interested in or benefited by any such sale, mortgage, exchange, lease, relinquishment, or loan, nor accept nor receive in any manner any fee, commission, compensation, emolument, or benefit

arising therefrom, except for the lawful discharge of his official duties.

13. An application for public land is not allowable if executed more than 10 days before its filing at the local United States land office.

14. Any officer violating any of these rules may be deprived of the right of further taking final proofs, and when any commissioner has so offended his action may be called to the attention of the court by which he was appointed, with appropriate recommendations. All registers and receivers and special agents have been charged to use their utmost diligence in seeing that these rules are fully and in good faith complied with, and directed to investigate and fully report any apparent violations thereof which may come to their notice.

CLAY TALLMAN, *Commissioner*.

Approved:

ANDRIEUS A. JONES,

*First Assistant Secretary.*

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SECTION 2294, UNITED STATES REVISED STATUTES, AS AMENDED BY THE ACT OF MARCH 4, 1904 (33 STAT., 59).

That hereafter all proofs, affidavits, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone acts, may, in addition to those now authorized to take such affidavits, proofs, and oaths, be made before any United States commissioner or commissioner of the court exercising Federal jurisdiction in the Territory or before the judges or clerk of any court of record in the county, parish, or land district in which the lands are situated: *Provided*, That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken out of the county in which the land is located the applicant must show by affidavit, satisfactory to the Commissioner of the General Land Office, that it was taken before the nearest or most accessible officer qualified to take said affidavits, proofs, and oaths in the land districts in which the lands applied for are located; but such showing by affidavit need not be made in making final proof if the proof be taken in the town or city where the newspaper is published in which the final proof notice is printed. The proof, affidavit and oath, when so made and duly subscribed, or which may have heretofore been so made and duly subscribed, shall have the same force and effect as if made before the register and receiver, when transmitted to them with the fees and commissions allowed and required by law. That if any witness making such proof, or any applicant making such affidavit or oath, shall knowingly, willfully, or corruptly swear falsely to any material matter contained in said proofs, affidavits, or oaths he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register. That the fees for entries and for final proofs, when made before any other officer than the register and receiver, shall be as follows:

For each affidavit, twenty-five cents.

For each deposition of claimant or witness, when not prepared by the officer, twenty-five cents.

For each deposition of claimant or witness, prepared by the officer, one dollar.

Any officer demanding or receiving a greater sum for such service shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by a fine not exceeding one hundred dollars.

### LEWIS H. LARSON.

*Decided August 23, 1915.*

#### ISOLATED TRACTS—FORT BERTHOLD INDIAN LANDS.

Lands in that portion of the Fort Berthold Indian reservation opened to entry by the President's proclamation of May 20, 1891, under the provisions of section 25 of the act of March 3, 1891, which provides that such lands shall be disposed of to actual settlers only under the homestead laws, are not subject to sale as isolated tracts under the act of March 28, 1912, amending section 2455, Revised Statutes.

#### JONES, *First Assistant Secretary*:

This is an appeal by Lewis H. Larson from the decision of the Commissioner of the General Land Office of May 20, 1915, requiring him to show cause why his entry, 010985, for the SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 6, T. 157 N., R. 92 W., Minot, North Dakota, allowed January 27, 1915, under the first proviso to the act of March 28, 1912 (38 Stat., 77), should not be canceled for the reason that the land is not subject to disposition under that provision.

It appears that the tract was ordered into market by the Commissioner on a showing that the greater portion thereof is too rough for cultivation.

Upon consideration of the case, however, the Commissioner found that the land was in that portion of the Fort Berthold Indian Reservation opened to entry by the President's proclamation of May 20, 1891 (27 Stat., 979), under the provisions of section 25 of the act of March 3, 1891 (26 Stat., 989), which provided that such lands "shall be disposed of to actual settlers only under the provisions of the homestead laws, except section twenty-three hundred and one of the Revised Statutes, which shall not apply."

Accompanying the appeal is an affidavit executed by Larson, wherein he avers that the land was applied for by him in good faith, and since purchasing he has improved it by breaking a portion thereof, seeding same to flax, and that he has under cultivation approximately 12 acres; that because of its superior fitness as a building place and because of the fact that he owned the tract in controversy, he erected buildings and sank a well at a distance of less than 40 rods from the land on an adjoining quarter section owned by him and has expended in that regard approximately \$1,000; that he has never made entry under the homestead law and is qualified to make a homestead entry; that had said land not been subject to purchase, as he supposed, he would have filed on it as a homestead, but that because of its superior

location for building and by reason of the fact that it was ordered into market and purchased by him, the buildings were placed upon an adjoining tract; that he could and would have exercised his homestead right and have placed his buildings upon said tract had he not been misled by being allowed to purchase it, and that it would now be impracticable for him to do so, in view of the large amount that he has expended on the adjoining tract for buildings and improvements. He therefore asks that—

a special order be obtained either confirming his sale or that the necessary proclamation placing the land upon the market under the isolated tract act, as amended by the act of March 28, 1912, be obtained from the President, and that said proclamation be made retroactive so as to confirm the sale made to him on January 27, 1915.

As above stated, the act under which the lands in the Fort Berthold Indian Reservation were opened to settlement by the President's proclamation of May 20, 1891, provided for the disposal of said lands to actual settlers only, under the provisions of the homestead law, and while the act of March 28, 1912, *supra*, refers in terms to "any isolated or disconnected tract or parcel of the public domain and not exceeding one quarter section" and "any legal subdivisions of the public land not exceeding one quarter section," it nevertheless is general legislation, and hence can not be accepted as affecting the special law providing for the disposition of the particular area in controversy.

In the case of *Frost v. Wenie* (157 U. S., 46), the Supreme Court said:

It is well settled that repeals by implication are not to be favored. And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the legislature intended by the later statute to repeal a prior one on the same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and, therefore, to displace the prior statute.

See also, *United States v. Healey* (160 U. S., 136); *James M. McComas* (33 L. D., 447); *Floyd W. Warren* (43 L. D., 181).

There is nothing in the act of March 28, 1912, which indicates a purpose to repeal or modify the act of 1891, under which the lands in the Fort Berthold Indian Reservation are to be opened to entry.

It must accordingly be held that the Department is without any authority to dispose of any portion of said reservation, opened to entry under the President's proclamation of 1891, in any other way than that prescribed by the act.

The decision appealed from is accordingly affirmed, and the entry must be canceled.

**SAN FRANCISCO CHEMICAL CO.**

*Decided August 26, 1915.*

**PLACER LOCATIONS OF PHOSPHATE ROCK—ACT OF JANUARY 11, 1915.**

The act of January 11, 1915, authorizing the completion under the placer mining laws of placer locations of lands containing deposits of phosphate rock, applies only to placer locations upon which the assessment work has been annually performed; and the land department is without authority to extend the remedial provisions of that act to locations upon which annual assessment work has not been performed.

**JONES, *First Assistant Secretary*:**

The San Francisco Chemical Company has appealed from the decision of April 16, 1915, holding for rejection the company's mineral applications for the E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , and S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 26, T. 9 S., R. 43 E., Blackfoot, Idaho, land district, unless proof be furnished that assessment work has been performed for the last two years, and certain other requirements be met.

The said company located the described tracts in 1905 and 1907, and in 1910 they were included within a phosphate reserve. Placer applications were filed for them in 1913, and they are designated the Diamond, the Dodo, and the Duke claims.

The company has declared its readiness to meet all the requirements of the Department except a showing of assessment work for the years 1913 and 1914.

It appears that certain other placer claims of the company, filed at the same time as these, were afterward covered by another person as lode claims, and were adversed by him. Pending determination of the question thus raised, assessment work was intermitted not only on the claims formally adversed but on these also, for the reason that the basis of the adverse proceedings affected the validity of all the company's placer claims.

It is urged on appeal that proof of annual assessment work has not heretofore been strictly exacted where only the Government was concerned, and that the remedial act of January 11, 1915 (38 Stat., 792), should be liberally applied, to relieve the company of further showing of assessment work, or to permit instead a showing of other work of the necessary amount required. If this cannot be done it is asked that action be postponed, to give an opportunity to obtain relief from Congress.

The act cited, however, applies only to placer locations upon which assessment work has been annually performed; and it is held that, in default of such performance, the Department is without authority to extend relief.

The decision is correct and is affirmed.

**JACOB HURLEY.***Decided August 30, 1915.***SOLDIERS' ADDITIONAL ENTRY—CANCELLATION—RETURN OF PAPERS.**

A soldiers' additional entry under section 2306, Revised Statutes, canceled for failure of the entryman, during a long term of years, to furnish a required affidavit as to the nonmineral character of the land, exhausts the right, and the entryman or assignee of the right is not entitled to have the additional right papers returned to him with a view to exercising the right a second time.

**SWEENEY, Assistant Secretary:**

F. W. McReynolds has appealed from the decision of January 23, 1915, denying his request for return of papers filed in connection with entry made February 12, 1876, under section 2306, Revised Statutes, at Susanville, California, by Jacob Hurley, for the E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  and NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 32, T. 20 N., R. 17 E., M. D. M., as additional to original entry alleged to have been made by said Hurley at Harrison, Arkansas, March 1, 1873, for the NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 21, T. 19 N., R. 25 W., 5th P. M.

Said last mentioned entry appears, however, to have been made by "Jacob Herly," of Madison County, Arkansas, who executed his application and affidavit before the clerk of that county, and who made said entry as an adjoining farm entry. Final proof on said entry was made October 8, 1875, by "Jacob Hurley," of Carroll County, Arkansas, who made proof before the receiver at Harrison, which is in Boone County, Arkansas, and who made proof of residence since March 1, 1873, and claimed the benefit, under the act of June 8, 1872 (17 Stat., 333), of military service in Company I, First Arkansas Infantry. Final certificate issued on said entry October 8, 1875, and patent on March 1, 1876.

On February 12, 1876, entry was made by Jacob Hurley, at Susanville, California, as above stated, based upon said original entry at Harrison, Arkansas, and said military service, the affidavit and certificate of copy of discharge certificate being executed September 16, 1875, before the clerk of Carroll County, Arkansas. The said affidavit recited that final proof had been made and final receipt No. 935 issued on said original entry, but this recital was evidently inserted in the affidavit subsequent to its execution, as such proof was not made and receipt issued until October 8, 1875. Hurley was called upon by the Susanville register to file nonmineral affidavit, to which he replied that he was never in California, and could make no affidavit as to the character of the land, although the signature to such reply does not correspond to the signature of the Susanville entryman. The signature of the Susanville entryman is also quite dis-

similar, as well as the spelling of his name, from that of the original entryman.

The Susanville entry was canceled February 6, 1896, for failure to furnish the required nonmineral affidavit.

In August, 1906, N. P. Chipman filed application for repayment of the moneys paid on said Susanville entry, claiming to have made said entry under power of attorney from Hurley, which was alleged to have been lost. Such application was denied, the Department affirming the action March 15, 1911, because of the applicant's laches.

Chipman has since then assigned to McReynolds, who asks return of said papers executed September 16, 1875, and filed with the Susanville entry.

The power of attorney alleged to have been given to Chipman is not in the record, and there is no satisfactory evidence of the existence of the same at any time. Chipman's inaction for many years, if he made the Susanville entry under such power, may have contributed to the deficiency in the matter of proof, and in view of the questionable identity of the original entryman and the soldier, the Department would not be warranted at this late date, under such circumstances as are here presented, in recognizing the existence of any additional right based upon the original entry in question, were there no other objection to the granting of the request under consideration.

It will be observed that the Susanville entry was intact upon the records of the land department for twenty years, segregating the land from the public domain, preventing its acquisition by any other claimant, and apparently would have passed to patent but for the laches of the entryman or of the party in whose interest it was made. The right conferred upon the soldier, by section 2306, Revised Statutes, is "to *enter* so much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres." This right has been exercised and satisfied, in this case, if it be assumed that it existed as alleged. The cancellation of the Sacramento entry because of the failure of the entryman, during twenty years, to comply with the proper requirement of the General Land Office, did not operate to confer upon him the privilege of exercising the right a second time.

The decision appealed from is accordingly affirmed.

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**JACOB HURLEY.**

Motion for rehearing of departmental decision of August 30, 1915, 44 L. D., 357, denied by First Assistant Secretary Jones November 5, 1915.

## INSTRUCTIONS.

*August 31, 1915.*

## TELEPHONE LINES ON PUBLIC LANDS—EXCEPTIONS IN PATENTS.

Where telephone lines have been actually constructed upon public lands of the United States, including national forest lands, and are being maintained and operated by the United States, appropriate maps or field notes thereof should be furnished the Commissioner of the General Land Office and notation thereof made upon the tract-books of that office; and if the lands be thereafter disposed of under any of the public land laws the final certificate and patent should except the telephone line and appurtenances with the right of the United States to maintain and operate the same.

*SWEENEY, Assistant Secretary:*

The Secretary of Agriculture has forwarded to this Department copies of tracings and field notes of constructed Forest Service telephone lines crossing lands within national forests and listed and entered under the homestead law of June 11, 1906 (34 Stat., 233), requesting that reservations of rights of way covering said lines be inserted in patents when issued.

In the case of *M. R. Hibbs* (42 L. D., 408), the Department held that it is without authority to insert in patents issued reservations of easements where not specifically authorized by law. The present cases involve telephone lines constructed over public lands of the United States under the authority of the appropriation acts of May 26, 1910 (36 Stat., 431), and March 4, 1911 (36 Stat., 1253), making appropriations

to be expended as the Secretary of Agriculture may direct for the construction and maintenance of . . . telephone lines . . . necessary for the proper and economical administration, protection, and development of the national forests.

The lands having been so devoted to a public purpose, pursuant to a law of Congress, subsequent disposition thereof will not, in the absence of an express conveyance by the United States, operate to pass title to the patentee to such telephone lines or the right of the United States to operate and maintain the same. On the other hand, under the circumstances of these cases, it seems unnecessary and inadvisable to reserve from disposition and eliminate from the entries and patents definite tracts or areas of land for the protection of such lines. It is believed that the solution of the matter is to convey all of the lands included within the area described in any such homestead entry, and all rights appurtenant thereto, except the property of the United States, namely, telephone line and appurtenances and the right of the United States to maintain and operate the same so long as it shall be necessary. This may be accomplished by excepting the aforesaid property of the United States and the rights necessary and incident thereto from the conveyance. In other words, instead

of conveying the property subject to an easement, no conveyance should be made of the telephone line or rights appurtenant thereto.

You [Commissioner of the General Land Office] are accordingly advised as follows: in cases where telephone lines or like structures have been actually constructed upon the public lands of the United States, including national forest lands, and are being maintained and operated by the United States, and your office is furnished with appropriate maps or field notes by the Department of Agriculture so prepared as to enable you to definitely locate the constructed line, proper notation thereof should be made upon the tract books of your office and if the land be thereafter listed or disposed of under any applicable public-land law, you should insert in the register's final certificate and in the patent when issued the following exception:

Excepting, however, from this conveyance that certain telephone line and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described, and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

The papers transmitted by the Secretary of Agriculture are herewith inclosed.

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**LANDS WITHIN NATIONAL FORESTS—PRACTICE—JOINT  
REGULATIONS.**

CIRCULAR.

[No. 435.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., September 4, 1915.*

TO REGISTERS AND RECEIVERS AND CHIEFS OF FIELD DIVISIONS:

The appended regulations will be effective on and after October 1, 1915.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

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WASHINGTON, D. C., *August 5, 1915.*

To the Commissioner, Chief of Field Service, Chiefs of Field Divisions, Registers and Receivers, General Land Office, Department of the Interior; the Forester, District Foresters, Forest Service, the Solicitor, and District Assistants to the Solicitor, Department of Agriculture.

GENTLEMEN: Better to effectuate cooperation in protecting the interests of the Government and settlers and other claimants to lands

within national forests, the following order is made, effective on and after October 1, 1915, superseding order of November 25, 1910 (39 L. D., 374):

1. Hereafter when a person files application to make entry, or to amend an existing entry, embracing lands within a national forest, basing the right of entry, or amendment, on settlement prior to the establishment of the forest, the register and receiver will require such person to file with his application a statement under oath, in duplicate, containing his name and address, description and character of the land involved, the date he established residence on the land, his absence from the land, kind and character of improvements placed thereon, and the amount of land cleared and cultivated, accompanied by the affidavit, in duplicate, of at least one disinterested person, corroborating the statement. The register and receiver will immediately forward the duplicate of such statement and affidavit to the supervisor of the national forest in which the lands are embraced, with information as to the date of filing the application, the date of filing the township plat of survey covering the land, and any other facts of record affecting the application, and will suspend action on the application for 60 days, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed six months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest, as hereinafter provided.

2. The register and receiver in issuing notice of intention to make final proof upon claims, either mineral or nonmineral, within a national forest shall immediately furnish a copy thereof to the supervisor in charge of such forest, and other than to publish such notice and receive final proof will, except in mineral cases as hereinafter prescribed, suspend action on the final proof for 60 days from date thereof, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed six months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest as hereinafter provided. In each case, however, where the register and receiver, upon examination of the final proof at any time after its submission, find it to be incurably defective, the same will be rejected and the Forest Service so advised, notwithstanding the time within which a protest may be filed hereunder has not expired.

3. The forest supervisor upon receipt of the statement mentioned in paragraph 1, or the notice mentioned in paragraph 2, will at once make investigation of the claim, and will submit to the district forester a report thereon, unless immediate investigation is impossible because of climatic or other conditions, when an extension of

time will be requested as provided in paragraphs 1 and 2 hereof, and the investigation will be made and the report submitted as soon as possible within the period of extension. The district forester will promptly consider the report, and if of opinion that no protest should be filed will so advise the register and receiver. If the district forester is of opinion that a protest should be made, he will transmit the papers to the district assistant to the solicitor, who will prepare for his signature a protest, not under oath or corroborated, in which shall be plainly and briefly stated the grounds upon which the protest is based. The protest shall be filed in triplicate with the register and receiver of the proper local land office.

4. Upon receipt of the protest, the register and receiver shall immediately forward a copy thereof to the Commissioner of the General Land Office, in accordance with Rule 4 of the Rules of Practice, and in every case immediately issue the notice required by Rule 5 thereof, accompanied by a copy of the protest, stating that unless the adverse party appears and answers the allegations of said notice within thirty days after service thereof, the allegations of the protest shall be taken as confessed. Upon the filing of the answer, the register and receiver shall set a date for a hearing, after consultation with the district assistant to the solicitor, and notify parties as provided in the Rules of Practice. Upon failure of the claimant to appear at the hearing the allegations of the protest will be taken as confessed. Hearings shall be conducted in accordance with the Rules of Practice. In other than mineral cases, action upon the application and upon the final proof, which may be offered in the usual manner, shall be suspended pending the final determination of the protest, except as provided in paragraph 2 hereof for the disposition of incurably defective proof. In mineral applications for patent the proof shall be considered on its merits, and, if found regular, certificate issued, but the claimant should be advised in such case that patent will be withheld by the General Land Office pending determination of the protest.

5. If no protest be filed within the time limit as provided in paragraphs 1 and 2 hereof, the register and receiver shall take appropriate action upon the application or the final proof. But in no case, in the absence of the filing of a protest or a no protest notice as hereinabove provided, shall patent issue until the Commissioner of the General Land Office is notified by, or ascertains from, the forester that the claim will not be protested, as provided in paragraph 6 hereof.

6. A protest may be initiated against any claim, mineral or non-mineral, embracing lands within national forests at any time prior to patent, by the solicitor or the district assistant to the solicitor

of the Department of Agriculture filing in the local land office, in triplicate, a complaint signed by the forester or the district forester, not under oath or corroborated, setting forth clearly and briefly the grounds of the protest. Upon receipt of such complaint the register and receiver shall forward a copy thereof to the Commissioner of the General Land Office; issue the notice required by Rule 5 of the Rules of Practice, accompanied by a copy of the complaint; and arrange for a hearing, if applied for, as provided in paragraph 4 hereof.

7. In all hearings affecting lands or claims within a national forest the district assistant to the solicitor will be entered of record as appearing in behalf of the Government, and will conduct the Government's side of the case.

8. Forest lieu and school selection cases will be handled by the chiefs of field division of the General Land Office in like manner as heretofore. The forest officers will, upon request of the chiefs of field division, render any assistance possible in the making of investigations, and the district assistants to the solicitor of the Department of Agriculture will cooperate with the chiefs of field division in the conduct of hearings in such cases, and thereafter will take action in like manner as heretofore, including the taking of appeals to the Secretary of the Interior.

9. In all Government cases before registers and receivers involving lands or claims within a national forest, the district assistant to the solicitor shall be served with copies of all answers, appeals, motions, orders, and decisions required to be noted under the rules in cases of private contests. The proper law officers of the Department of Agriculture shall also have a right of appeal from any decision by the Commissioner of the General Land Office and to file motion for rehearing in the Department of the Interior, or take other like action in the same manner as a private contestant, and shall receive like notices of proceedings and decisions: *Provided, however,* That the Department of Agriculture shall not be required to take formal appeals from decisions of registers and receivers.

10. Chiefs of field division and special agents will not hereafter take action in regard to any claims within a national forest, except as provided in paragraph 8 hereof, unless specifically directed by the Commissioner of the General Land Office or the Secretary of the Interior: *Provided,* That chiefs of field division may, on request of a district forester, assign mineral examiners to assist in the investigation of cases involving mining claims.

11. Costs of hearings will be paid from the appropriation for expenses of hearings in land entries as now provided for other Government contests. Prior to June 1 of each year the district assistant

to the solicitor will mail to the chief of field division in whose division the lands involved lie an estimate of the funds necessary to cover the hearings during the first quarter of the ensuing fiscal year. Like action will be taken on the first day of each month which immediately precedes the other quarters of the fiscal year. Such estimates should be accompanied by a list of the cases to be heard, which should include the names of claimants, local land office, and serial number of entry or application, and character of entries or filings. The chief of field division will transmit the lists and estimates received from the district assistant to the solicitor to the Commissioner of the General Land Office at the same time he submits his estimates for hearings involving lands in his district outside of national forests. When these lists and estimates are received in the General Land Office the appropriation will be allotted for the quarter, and each chief of field division will be advised of the amount which will be allowed for forest cases, and he will advise the district assistant to the solicitor thereof. Payment for the expenses of hearings from the appropriation so allotted will be made by special disbursing agents upon proper vouchers, as is now provided for Government contests in cases outside of national forests, but such vouchers must be approved by the district assistant to the solicitor and by the chief of field division before payment is made.

Respectfully,

FRANKLIN K. LANE,  
*Secretary of the Interior.*  
D. F. HOUSTON,  
*Secretary of Agriculture.*

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#### PRACTICE—SERVICE OF NOTICE ON UNKNOWN HEIRS.

##### CIRCULAR.

[No. 436.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, September 4, 1915.*

REGISTERS AND RECEIVERS,  
*United States Land Offices.*

SIRS: The Postal Laws and Regulations provide that mail indefinitely addressed shall be denied admission to the registered mail. Accordingly, when notice is to be served by you on the unknown heirs of a public-land claimant, the same should be addressed to the claimant at his address of record and also at the post-office nearest the land.

Notice thus addressed will be held to constitute notice to the unknown heirs, provided the letter, if undelivered, is held at the office of delivery for at least thirty days.

All prior regulations in conflict herewith are hereby revoked.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved, September 4, 1915:

Bo SWEENEY,  
*Assistant Secretary.*

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**RULE 3 OF PRACTICE AMENDED—CORROBORATION OF APPLICATION.**

CIRCULAR.

[No. 440.]

DEPARTMENT OF THE INTERIOR,  
*Washington, September 23, 1915.*

Rule 3 of the Rules of Practice approved December 9, 1910 (39 L. D., 395), is hereby amended to read as follows:

RULE 3. The statements in the application must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry, as, if proven, would render it subject to cancellation, and these facts must be set forth in his affidavit.

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

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**RULE 98 OF PRACTICE ADDED—TRANSFEREES.**

CIRCULAR.

[No. 440.]

DEPARTMENT OF THE INTERIOR,  
*Washington, September 23, 1915.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: In order that transferees and incumbrancers of lands covered by unpatented public-land entries may be advised as to what procedure should be followed by them in order that they may be entitled to notice of contest or other proceedings against the assigned or incumbered entry, the Rules of Practice approved December 9, 1910 (39

L. D., 395), are hereby amended by the addition of the following rule:

HOW TRANSFEREES AND INCUMBRANCERS MAY ENTITLE THEMSELVES TO NOTICE OF  
CONTEST OR OTHER PROCEEDINGS.

RULE 98. Transferees and incumbrancers of land, the title to which is claimed or is in process of acquisition under any public-land law, shall, upon filing notice of the transfer or incumbrance in the district land office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting such land which is required to be given the original entryman or claimant. Every such notice of a transfer or incumbrance must be forthwith noted upon the records of the district land office and be promptly reported to the General Land Office, where like notation thereof will be made. Thereafter, such transferee or incumbrancer, as well as the entryman, must be made a party defendant to any proceeding against the entry.

You will promptly cause notice of the foregoing amendment to be given to the district land officers and through them to the public.

Respectfully,

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

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RULES OF PRACTICE.

[No. 444.]

Rule 83 of Practice amended to read as follows:

RULE 83. Motions for rehearing before the Secretary must be filed within thirty days after receipt of notice of the decision complained of, and will act as a supersedeas of the decision until otherwise directed by the Secretary. Such motions, briefs and arguments must not be served on the opposite party and must be filed directly with the Secretary of Interior, Washington, D. C.

Any such motion must state concisely and specifically the grounds upon which the motion for rehearing is based, and be accompanied by brief and argument in support thereof.

If proper grounds are not shown the rehearing will be denied and sent to the files of the General Land Office, whereupon, the Commissioner will proceed to execute the decision before rendered. If upon examination, grounds sufficient for rehearing are shown, a rehearing will be granted and the moving party will be notified that he will be allowed fifteen days from receipt of notice within which to serve a copy of his motion, together with all argument in support thereof, on the opposite party, who will be allowed thirty days thereafter in which to file and serve answer, brief and argument. Thereafter the cause or matter will be again considered and appropriate action taken, which may consist either in adhering to the former decision or modifying or vacating the same or the making of any further or other order deemed warranted.

As applied to the Territory of Alaska, the periods of time granted by this rule shall be doubled.

Approved October 25, 1915:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

**McGRAW v. LOTT.***Decided September 3, 1915.***CONTESTANT—PREFERENCE RIGHT—NOTICE BY REGISTERED LETTER.**

The registered letter containing notice to a contestant of the cancellation of the entry under contest and of his preference right of entry should be delivered only to contestant himself, which must be evidenced by his signature on the registry return receipt, or to some one duly authorized by him in writing to receive and receipt for the same, which must be evidenced by the signature on the return receipt of the party so authorized, as attorney or agent for contestant.

**CONSTRUCTIVE NOTICE TO CONTESTANT OF HIS PREFERENCE RIGHT.**

Where a contestant by his negligence in failing to call for the letter, or by changing his post office address without notification to the local office, and without authorizing some one else in writing to receive the letter for him, puts it out of the power of the land department to deliver the notice to him or some one authorized by him, he will, after expiration of the period accorded him within which to exercise his preference right, and return of the letter uncalled-for, be considered to have had constructive notice, and will not thereafter be heard to complain that he never received the notice.

**CONSTRUCTIVE NOTICE—LETTER MUST REMAIN SUBJECT TO CALL.**

To charge a contestant with constructive notice where he fails to call for the registered letter containing notice of his preference right, the letter must have remained in the post office, subject to call, during the entire period it was required to be so held, and must be returned to the local office as uncalled-for at the end of that period as evidence of that fact.

**DELIVERY OF REGISTERED LETTERS CONTAINING NOTICES RESTRICTED.**

Direction given that hereafter all registered letters containing notices to contestants advising them of the cancellation of entries under contest and of their preference rights of entry shall bear a direction to the postmaster to deliver the letter only to the addressee or to some one duly authorized by him in writing to receive it.

**SWEENEY, *Assistant Secretary:***

Harrie R. McGraw contested and procured the cancellation of the homestead entry of John Lott, for the SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 12, and the S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , and NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 13, T. 18 S., R. 14 W., N. M. P. M., Las Cruces, New Mexico, land district, and on October 3, 1913, notice of the cancellation of the entry and of his preference right of entry was mailed to him by registered letter to Silver City, New Mexico, his record address. This notice was received and receipted for October 4, by May McGraw, his wife, who signed merely her own name and not as agent for contestant.

November 5, 1913, thirty days from the date of delivery of the notice to May McGraw having expired, and no action having been taken by McGraw in exercise of his preference right, the former entryman, Lott, filed application to make second homestead entry for the same land, which was suspended by the local officers for the reason that they did not consider the delivery of the notice of cancellation to May McGraw a proper service, no evidence being fur-

nished that she was authorized by the contestant to receive and receipt for the registered notice. On the same day the local officers issued a new notice directed to McGraw at his record address, which was delivered November 26, to his attorney duly authorized by him in writing to receive and receipt for the same. Lott appealed from the suspension of his application to make second entry, contending that the local officers had no authority to issue the second notice and thereby in effect to extend the preference-right period.

December 4, 1913, within thirty days from the delivery of the second notice of cancellation, McGraw filed homestead application for the land in question, which was also suspended by the local officers to await final action on Lott's appeal. McGraw appealed, contending that delivery of the first notice to May McGraw, who was neither his authorized attorney nor agent, was not a sufficient notice, and that as he filed his application within thirty days from receipt of notice of cancellation of the entry under contest, it should be allowed without reference to any intervening application.

July 11, 1914, the General Land Office held that the delivery of the registered letter containing the first notice to contestant's wife, to whom his ordinary mail was customarily delivered, was a proper delivery, and that it was error on the part of the local officers to issue the second notice, and thereupon rejected McGraw's application. McGraw has appealed to the Department.

The question presented is whether the delivery of the first notice of cancellation to May McGraw was a proper and sufficient notice to contestant.

Section 2 of the act of May 14, 1880 (21 Stat., 140), provides that:

In all cases where any person has contested, paid the land-office fees, and procured the cancellation of any preemption, homestead, or timber-culture entry, he shall be notified by the register of the land office of the district in which such land is situated of such cancellation, and shall be allowed thirty days from date of such notice to enter said lands: *Provided*, That said register shall be entitled to a fee of one dollar for the giving of such notice, to be paid by the contestant, and not to be reported.

As stated in *Holme v. Jankowski et al.* (39 L. D., 225, 227):

The general rule is . . . that where a statute requires the giving of notice and there is nothing in the context of the law or in the circumstances of the case to show that any other notice was intended, *personal notice* must always be given . . . . This rule applies particularly in the class of cases where some statutory or contract right is to be acquired or penalty enforced after a specified notice.

Rule 7 of the Rules of Practice, governing service of notice of contest, provides that:

When served by registered mail, proof thereof must be accompanied by post-office registry return receipt, *showing personal delivery to the party to whom the same is directed.*

In *Tracy v Johnson* (41 L. D., 124), it was held that (syllabus):

Where notice of a contest is sent by registered mail, proof of delivery of the registered letter containing the notice to the agent of the addressee, authorized by him, in writing, to receive it, is a compliance with the requirement of Rule 7 of the Rules of Practice that service of notice in such case must be evidenced by the post-office registry return receipt, "showing personal delivery to the party to whom the same is directed."

Rule 7 was adopted with respect to notices of contests, where service upon the entryman himself or someone duly authorized by him in writing is necessary in order to acquire jurisdiction; and the principle of that rule can not be applied without modification to notices of cancellation to contestants, for the reason that it has long been held by the Department that where a contestant by his negligence puts it out of the power of the land department to deliver notice to him, he will, after expiration of the period allowed him within which to exercise his preference right, be held to have had constructive notice.

In *Saugstad v. Fay* (39 L. D., 160, 164), the Department gave specific direction that:

All notices hereafter issued advising contestants of the cancellation of the contested entry and of their right to apply to make entry of the land in virtue of the preference right given by the statute will be served *personally* upon the contestants at their address of record.

To like effect is the decision in *Holme v. Jankowski et al.*, *supra*.

The preference right of entry conferred upon successful contestants by the act of May 14, 1880, *supra*, is a purely personal right, exercisable only by the contestant himself or his privies in law. It is essential that notice of this right be brought home to him personally, unless he by his negligence puts it out of the power of the land department to so notify him. These notices are sent by registered letter to the address of record given by contestant. Personal service of such notices consists either in delivery to the contestant himself, or to some one duly authorized by him, in writing, to receive and receipt for the same. (*Tracy v. Johnson*, *supra*). The local officers, under the direction in *Saugstad v. Fay*, above quoted, and the principles announced in *Holme v. Jankowski*, *supra*, should have restricted delivery of the registered letter containing the notice to the addressee or someone authorized by him in writing to receive it. Their failure to do this can not operate to deprive contestant of his statutory right.

Personal service of the first notice issued in this case not having been made as required by the decisions of the Department, the local officers properly issued a second notice, which was properly served on contestant's duly authorized attorney, and contestant was entitled

to thirty days from the date of that service within which to exercise his preference right.

The only service of notice of cancellation to a contestant that will be recognized by the land department under the principle of the decisions referred to is:

1. Delivery of the registered letter containing the notice to the contestant himself, which must be evidenced by his signature on the registry return receipt.

2. Delivery of the registered letter to someone duly authorized by the contestant, in writing, to receive and receipt for the same, which must be evidenced by the signature on the return receipt of the party so authorized, as attorney or agent for the contestant.

3. Where the contestant by his negligence in failing to call for the letter or by changing his post office address without notification to the land office, and without authorizing someone else in writing to receive the letter for him, puts it out of the power of the land department to deliver the notice to him or someone authorized by him, he will, after the expiration of the period accorded him within which to exercise his preference right, and return of the letter uncalled-for, be considered to have had constructive notice, and will not thereafter be heard to complain that he never received the notice.

Delivery to "any responsible person to whom the addressee's ordinary mail is customarily delivered," as authorized by paragraph (d) of section 935 of the Laws and Regulations of the Post Office Department, with respect to registered letters generally, does not meet the requirements of the land department, for the reason that, while the postmaster may know that the person to whom he delivers the letter, and who signs the receipt, is one "to whom the addressee's ordinary mail is customarily delivered," the land department has no such knowledge, and can only recognize delivery to a person other than the addressee himself when such person produces written evidence of authority which can be filed with the record in the case as proof that notice has been properly given. To remedy this situation, it is directed that hereafter all registered letters containing notices to contestants advising them of the cancellation of the entry under contest and of their preference right of entry shall bear a direction to the postmaster to deliver the letter only to the addressee or to someone duly authorized by him in writing to receive it.

Under the General Land Office circular of April 27, 1907, instructing local officers that in all cases where notice is sent by registered letter allowing a certain period within which action shall be taken, "the envelopes shall be so marked as to be held at the record post office address, if uncalled-for, for the full period specified," notices to contestants of the cancellation of the entry and of contestant's

preference right are endorsed with a direction to the postmaster to hold for thirty days unless sooner delivered.

The record shows that the first notice issued in this case was taken from the post office by May McGraw on October 4, 1913, the day after it was mailed by the local officers. Had the contestant himself, or someone duly authorized by him, called for it at any time after that date, and within the thirty-day period, it could not have been delivered to him. To charge a contestant with constructive notice where he fails to call for the registered letter containing notice of his preference right, the letter must have remained in the post office, subject to his call, during the entire period it was required to be so held, and must be returned to the local office as uncalled-for at the end of that period, as evidence of that fact.

In view of the foregoing the Department is of opinion that the delivery of the registered letter containing the notice to the wife of the addressee, who was without written authority to receive it, was not a good and sufficient notice, and that, the letter not remaining in the post office subject to his call, contestant can not properly be charged with constructive notice.

The decision appealed from is reversed, McGraw's homestead application will be allowed, if otherwise regular, and Lott's application will be rejected.

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### DAWKINS v. HEDIN.

*Decided September 3, 1915.*

#### PRACTICE—CONTEST—SERVICE OF ANSWER.

The Rules of Practice do not require a contestee to make personal service upon the contestant of a copy of his answer; but it is sufficient if delivery thereof at the contestant's address designated in the application to contest be shown; and the post-office receipt of the sending office to the contestee for the registered letter is sufficient evidence that he has met this requirement.

#### PRACTICE—HEARING—POLICY OF LAND DEPARTMENT.

It is not the policy of the land department to finally adjudicate the rights of entrymen solely upon technical considerations, but to afford claimants for public lands opportunity to be heard notwithstanding they may have, through mistake, inadvertence, or even laches, clearly forfeited their rights to a hearing under the Rules of Practice, unless it appear from the record, with reasonable clearness, that they have no substantial claims to equitable consideration.

#### SWEENEY, *Assistant Secretary*:

The record in the above-entitled case has been certified to the Department, under the Rules of Practice, pursuant to departmental order of May 21, 1915. The facts disclosed, so far as they are material to the disposition of the matter, are as follows:

On March 13, 1913, Hans Hedin made homestead entry for the SE. ¼, Sec. 7, T. 1 N., R. 10 E., B. H. M., Rapid City, South Dakota, land

district, against which, on January 16, 1915, Will Dawkins filed his affidavit of contest, charging, in substance, that Hedin had neither resided upon, cultivated, nor improved the land. Contest notice was personally served on Hedin on January 14, 1915, and on February 13, 1915, he filed answer, admitting that no part of the land was cultivated during the year 1914, but alleging that the person whom he had employed for that purpose failed to do the work, and that the tract had been used for grazing purposes. The charge of nonresidence was denied.

The answer not having been filed within the time required by the Rules of Practice, the contestant filed a motion for judgment by default. Thereafter the local officers transmitted the record to the Commissioner of the General Land Office who canceled the entry and closed the case upon the ground that the entryman had failed to appear or answer within the time required by the Rules of Practice. As hereinbefore stated, the case is before the Department upon certiorari.

Hedin's failure to file his answer within thirty days from service upon him of notice of contest is sought to be explained by the facts that the copy of his answer addressed to the contestant by registered mail and forwarded on January 15, 1915, was not delivered to the contestant, but to the latter's brother, and that the registry return card for this letter was not returned to Hedin; and it is contended that the latter's delay in filing answer in the local office should be excused for the reason that he could not sooner have filed proof of service of the answer upon the contestant.

The Rules of Practice do not require a contestee to make personal service upon the contestant of a copy of the answer; it is sufficient to show the delivery thereof at the contestant's address designated in the application to contest, and the post-office receipt of the sending office to the contestee for the registered letter is sufficient evidence that he has met this requirement. - There is no evidence in this case that Hedin undertook within the thirty days allowed for answer to comply with the requirements of the Rules of Practice, even as he alleges he understood them; he made no effort during that time to secure an extension of time in which to answer, nor did he make inquiry of the postmaster at the contestant's record address until more than thirty days had expired. The answer which he filed after it was too late might have been filed at any time within the period allowed for that purpose, and an affidavit to the effect that a copy of same had been mailed to the contestant at his record address, together with the registry receipt from the sending office, would have, within the meaning of the rules, been sufficient evidence of the delivery of a copy of the answer *at* such record address.

The Department does not feel inclined, however, to finally adjudicate the rights of an entryman solely upon technical considerations, especially a technical construction of the Rules of Practice. On the contrary, it is, and has always been, the policy of the land department to allow claimants of public land opportunity to be heard, notwithstanding they may have, through mistake, inadvertence, or even laches, clearly forfeited their right to a hearing under the Rules of Practice, unless it appears from the record, with reasonable clearness, that they have no substantial claims to equitable consideration.

The Department finds with the record a letter from the entryman to the Commissioner of the General Land Office, dated March 26, 1914, in which he makes the following statement with reference to his residence on the land in controversy:

I was there most of last September and since then I have been there one whole day and pretty close to one night every week.

As hereinbefore stated, he admitted that he had not cultivated the land during the year 1914. Under the admitted facts, therefore, it is obvious that a hearing would not avail Hedin and that the entry should be canceled, because, as alleged in the affidavit of contest, he has neither resided upon nor cultivated the land as required by law.

The decision appealed from is accordingly affirmed.

### KENNEDY v. SEVERANCE.

*Decided September 14, 1915.*

#### PRACTICE—SERVICE OF NOTICE OF CONTEST—ABATEMENT.

The provision of Rule 8 of Practice that a contest shall abate in case of failure to serve notice thereof within the time fixed by that rule is not applicable where *prima facie* service of notice as required by that rule is shown; and where such *prima facie* service is questioned, on the ground that the person to whom the registered letter containing the notice was delivered was not authorized by the entryman to receive it, contestant should be afforded opportunity to show that such person was the duly authorized agent of the entryman or to apply for the issuance of an alias notice of contest.

SWEENEY, *Assistant Secretary*:

R. H. Kennedy has appealed from the decision of the Commissioner of the General Land Office, dated May 27, 1914, holding that his contest against George W. Severance's homestead entry for the W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 17, and E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 18, T. 4 N., R. 33 E., B. H. M., Pierre, South Dakota, land district, had abated, for the reason that personal service of the notice of contest and proof thereof had not been made as required by the Rules of Practice.

Notice of contest was attempted to be served by registered letter, which was receipted for, as shown by the return card, by Albert M. Severance, as agent for George W. Severance.

Notice was properly served upon the contestee if Albert M. Severance had authority to receive his mail. *Tracy v. Johnson* (41 L. D., 124). The regulations of the Post Office Department require that registered mail be delivered either to the addressee or to a person authorized by him to receive it. The presumption that an officer discharges his duty is applicable to officers of the Post Office Department, and the record therefore establishes *prima facie* personal service of notice.

However, good administration demands that so important a question as that of jurisdiction over a defendant entryman should not rest solely upon a *prima facie* presumption such as has been hereinbefore referred to, and that, in cases like the one here under consideration, the contestant be required to show, if it be a fact, that the person receipting for the letter had authority to receive the same, rather than to enforce the provisions of Rule of Practice 8, which is not applicable to cases where service of notice is *prima facie* shown.

The decision appealed from is accordingly vacated and the contestant will be allowed a reasonable time, to be fixed by the Commissioner, within which either to show that Albert M. Severance was the duly authorized agent of the entryman or to apply for the issuance of an alias notice of contest.

### FRENCHIE E. BROWN.

*Decided September 22, 1915.*

#### ENLARGED HOMESTEAD—ADDITIONAL ENTRY—ACT MARCH 3, 1915.

The principal change made in the enlarged homestead laws by section 3 of the act of March 3, 1915, was to allow additional entry to be made by an entryman who had already submitted final proof upon his original entry; and only such entrymen can avail themselves of this provision as under the enlarged homestead laws as theretofore existing are "qualified entrymen under the homestead laws of the United States."

#### ENLARGED HOMESTEAD—ADDITIONAL ENTRY—QUALIFICATIONS.

One who made homestead entry for less than 160 acres and subsequently made additional entry under section 6 of the act of March 2, 1889, for an amount of land which together with the original entry aggregates 160 acres, is not a "qualified entryman under the homestead laws" within the meaning of the enlarged homestead acts, and is therefore not entitled to make additional entry under section 3 of the act of March 3, 1915, as additional to the entry made under section 6 of the act of 1889.

#### SWEENEY, *Assistant Secretary*:

June 10, 1908, Frenchie E. Brown made homestead entry No. 476, at Billings, Montana, for lot 2, Sec. 22, T. 8 S., R. 22 E., M. M., containing 9.62 acres, on which cash certificate No. 0816 issued March 13, 1909, the entry being patented January 28, 1910. January 4, 1910, he made homestead entry No. 03213, at Billings, Montana, under section 6 of the act of March 2, 1889 (25 Stat., 854), embrac-

ing, as amended, the SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 25, T. 5 S., R. 21 E.; lots 3 and 4, Sec. 30, lot 1, Sec. 31, T. 5 S., R. 22 E., containing 159.25 acres. September 2, 1914, he made homestead entry No. 012014, under the act of February 19, 1909 (35 Stat., 639), for the E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , lots 2 and 3, Sec. 31, T. 5 S., R. 22 E., M. M., containing 159.76 acres, additional to homestead entry No. 03213.

By decision of May 28, 1915, the Commissioner of the General Land Office held that he was not qualified to make homestead entry No. 012014, which was held for cancellation. Appeal to the Department has been prosecuted.

In the appeal it is contended that the entryman may make the additional entry involved, under section 3 of the act of March 3, 1915 (38 Stat., 956), which provides in part:

That any person who has made, or shall make, homestead entry of lands of the character herein described, and who has not submitted final proof thereon, or who having submitted final proof still owns and occupies the land thus entered, shall have the right to enter public lands, subject to the provisions of this act, contiguous to his first entry, not exceeding three hundred and twenty acres.

The act of March 3, 1915, amends the previous acts of February 19, 1909 (35 Stat., 639), and the act of February 11, 1913 (37 Stat., 666). Section 3, as contained in the original act of February 19, 1909, limited the right to make additional entry under the enlarged homestead act to those entries in which final proof had not been made, and this provision was substantially reenacted in the act of February 11, 1913. The principal change in the law, therefore, made by section 3 of the act of March 3, 1915, is, that it allows an additional entry to be made by an entryman who had already submitted final proof upon his original entry. To ascertain the qualifications of an entryman under act of March 3, 1915, it is still necessary to refer to the original act of February 19, 1909, which limited all entries under the enlarged homestead laws to a person "who is a qualified entryman under the homestead laws of the United States." In the case of Marion L. Bookout (41 L. D., 381) it was held that one who made homestead entry for less than 160 acres, and subsequently made additional entry, under section 6 of the act of March 2, 1889, for an amount of land which, together with the original entry, aggregates 160 acres, is not entitled to make further entry under section 3 of the enlarged homestead act, as additional to the entry made under section 6 of the act of 1889. Brown, therefore, is clearly disqualified from making additional entry under section 3 of the act of March 3, 1915, *supra*.

Neither is his entry within the provisions of the act of March 4, 1915 (38 Stat., 1162), which limits ratification of homestead entries

erroneously allowed under enlarged homestead laws, to such entries as were made prior to January 1, 1914.

However, should Brown reconvey to the United States, accompanying reconveyance with an abstract of title, showing good title in the United States, his original entry for lot 2, Sec. 22, T. 8 S., R. 22 E., M. M., the objection to his qualifications to make homestead entries Nos. 03213 and 012014 would be removed. The Commissioner, accordingly, will afford the entryman a reasonable time within which to cause such appropriate reconveyance to be made, and, upon the acceptance of the same, his present entries will be held intact, final proof thereon to be submitted to the Board of Equitable Adjudication for consideration.

The matter is accordingly remanded for further proceedings in harmony with the above.

### GOUDY v. HEIRS OF MORGAN.

*Decided September 22, 1915.*

#### CONTEST—CHARGE—DEATH OF ENTRYMAN—PRACTICE.

An entry contested on the ground that the entryman died intestate leaving no surviving heirs, and charging no default in compliance with the requirements of the law, will not be canceled under Rule 14 of Practice merely because of failure of answer to the charge; but in such case the contestant will be required to submit proof to sustain the charge.

*SWEENEY, Assistant Secretary:*

C. B. Goudy, the contestant in above entitled case, has appealed from decision of June 10, 1915, by the Commissioner of the General Land Office, holding for dismissal his contest against the homestead entry of John M. Morgan, with the right, however, to amend the charges so as to state a cause which would justify cancellation of the entry.

The entry was made June 10, 1912, for lots 3 and 4, E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 28, T. 21 S., R. 20 E., Phoenix, Arizona, land district.

March 1, 1915, the contestant filed his application to contest, charging:

That John M. Morgan died on or about the 19th day of January, 1915, intestate, and leaving no surviving heir or heirs.

Service was made by publication, and within proper time contestant filed motion for default judgment, because of failure of answer to the charges.

The local officers transmitted the record to the General Land Office, with recommendation that the entry be canceled as prayed for.

The Commissioner in the decision appealed from, stated:

The only charge in this case is that entryman died intestate, leaving no surviving heir or heirs, which, if true, would not be sufficient grounds for canceling the entry. Therefore the contestant should have been called upon to

amend his application so as to include such charges against the validity of the entry as would justify cancellation.

A number of decisions were cited in support of the appeal, to the effect that the allegations of contest are sufficient upon which to base cancellation of the entry. Among other cases cited, is that of Barksdale v. Rhodes (28 L. D., 136), wherein it was held:

A contestant who alleges the death of an entryman, and that the deceased left no heirs competent to inherit his rights under the entry, and secures the cancellation of the entry on the proof of such allegations, is entitled to a preferred right of entry.

That case is authority for holding that the charge in the present case is sufficient; but, in that case, proof was submitted in support of the allegations. None has been submitted in this case, but default judgment is asked under Rule 14 of the present Rules of Practice, which is different from the rules which obtained at the time the proceedings were had in the case above cited. However, it is not believed that the rule should be applied in a case of this character. No default as to compliance with the requirements of law respecting residence and cultivation is alleged.

It is important that the allegation of death of the entryman, intestate, leaving no surviving heir, be established by proof, and not left for support simply upon the contest affidavit, and constructive notice by publication.

The decision appealed from is accordingly modified and the case is remanded to afford the contestant opportunity to submit proof as indicated.

## RECLAMATION ENTRIES—APPLICATIONS UNDER ACT OF MARCH 4, 1915.

### CIRCULAR.

[No. 437]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., September 25, 1915.*

REGISTERS AND RECEIVERS,  
*United States Land Offices.*

SIRS: The first sentence of paragraph 2 of Circular No. 409, approved April 29, 1915 (44 L. D., 87), reading as follows:

2. Applications to make new entry under the provisions of this act must be on the form provided for homestead applications, must contain the land-office number and the description of the former entry, a relinquishment of the former entry and an affidavit by the applicant showing the facts upon which he claims to be entitled to the provisions of this act.

is amended to read as follows:

2. Applications to make new entry under the provisions of this act must be on the form provided for homestead applications, must refer to the serial number and give the description of the former entry, and must be accompanied by a relinquishment of the former entry and an affidavit by the applicant showing the facts upon which he claims to be entitled to the provisions of this act.

Paragraph 3, reading as follows:

3. Where such application is filed in the same land district in which the former entry was made it will take the serial number of the old entry. Where the area of the farm unit applied for is in excess of the area of the former entry, fee and commissions for such excess area must accompany the application.

is amended by striking out the above and substituting in place thereof the following:

3. Such applications will be given current numbers of your series and the proper fee and commissions will be collected in each case.

Very respectfully,

CLAY TALLMAN, *Commissioner*.

Approved September 25, 1915:

ANDRIEUS A. JONES,

*First Assistant Secretary.*

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### MOURITSEN v. ASTLE.

*Decided September 27, 1915.*

#### PHOSPHATE WITHDRAWAL—HOMESTEAD APPLICATION—ACT JULY 17, 1914.

An application to make homestead entry for lands within a phosphate withdrawal, filed prior to the act of July 17, 1914, providing for the entry of withdrawn phosphate lands with reservation of the phosphate deposits to the government, rejected because of the withdrawal, and pending on appeal at the date of the act, can not be allowed, though amended to conform to the requirements of the act, in the face of an intervening application filed subsequent to and in conformity with the provisions of said act.

JONES, *First Assistant Secretary*:

David Mouritsen appealed from decision of June 29, 1915, rejecting his homestead application subject to the act of July 17, 1914 (38 Stat., 509), for SW.  $\frac{1}{4}$ , Sec. 15, T. 12 S., R. 44 E., B. M., Blackfoot, Idaho, on the ground of prior right in William L. Astle, rival claimant for the same land.

July 8, 1914, Astle filed homestead application for this tract, which the local office rejected July 20, 1914, on the ground that the land was withdrawn and reserved for phosphate deposits. August 12, 1914, he appealed informally, in an affidavit in which he waived rights to phosphate underlying said land, and requested allowance of

his application, subject to the provisions and reservations of the act of July 17, 1914, *supra*. Action on the case was delayed in the General Land Office pending issuance of instructions under said act of July 17, 1914, and April 21, 1915, the Commissioner returned the application to the local office with direction to allow the entry under section 1 of said act, should no objection appear on the records. June 11, 1915, the local office returned the application of Astle to the Commissioner, together with the intervening application of Mouritsen, which was filed August 3, 1914, and asked instructions from the Commissioner, who held that, on passage of the act of July 17, 1914, the land became subject to homestead entry, with reservation of the mineral to the United States; that Astle's application was yet pending and might have been allowed under said act upon proper amendment, which the local office should have allowed Astle to make; as no adverse claim intervened before July 20, 1914, and Astle consented August 12, 1914, to amendment of his application waiving the mineral, Mouritsen's application, filed August 3, 1914, should not be considered to defeat the prior application of Astle.

In this the Commissioner erred. It is well settled that no rights are acquired by an application for land at a time when it is not subject to such appropriation. *Santa Fe Pacific R. R. Co. v. Ranklev* (34 L. D., 380, 383); *Michael Toole* (24 L. D., 462, 465); *Northern Pacific R. R. Co. v. Hunt* (18 L. D., 163, 164); *Hall v. Stone* (16 L. D., 199).

Astle's application was unqualified, seeking to secure a perfect title without reservation to the United States. The land was then not subject to homestead or any other form of entry. Mouritsen's application was made after July 17, 1914, and was in perfect form consenting to reservation of the mineral deposits to the United States. The land department was without power to permit Astle, in the face of this application, to amend his own application so as to make it waive mineral rights. An application for land which is not subject to entry confers no right though the land, pending an appeal, becomes subject to entry. *Katharine Davis* (30 L. D., 220, 221); *Falje v. Moe* (28 L. D., 371, 373); *Reichert v. Northern Pacific R. R. Co.* (44 L. D., 78).

An application, rejected or fatally defective when presented, should not be allowed on supplemental showing in the nature of amendment to prejudice an intervening application made in due form by a qualified applicant. *De Courcy v. Vandever* (38 L. D., 457, 459); *Ady v. Boyle* (17 L. D., 529, 530); *Mills v. Daily* (17 L. D., 345); *Miles v. Waller* (17 L. D., 343, 345).

It appears by affidavit annexed to the appeal that Mouritsen, after filing his application, went into possession, erected a house, plowed

10 acres of land in the fall of 1914, which he planted in the spring of 1915, he established residence in his house and has ever since lived on the land. The improvements have cost him \$400.

Astle has not asserted any right to the land or objected to Mouritsen's occupation and improvement. This affidavit was served with the appeal on Astle, July 16, 1915, and has not been denied. Its truth may therefore properly be assumed.

In view of the Department, Mouritsen's application, made in due form for the land when subject to entry, is prior in right to that of Astle who did not bring his application into form that it could be allowed until August 12, 1914, and after Mouritsen presented his application, in proper form, which has been followed by settlement and improvement.

The decision is reversed and Mouritsen's application will be allowed.

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**LESLIE D. JUDY.**

*Decided October 4, 1915.*

**SWAMP LANDS—MINNESOTA DRAINAGE LAWS—ACT OF MAY 20, 1908.**

One who made homestead entry for less than 160 acres and who would after submission of final proof upon such entry be entitled to make an additional entry under section 6 of the act of March 2, 1889, is qualified to purchase from the State and make entry under the act of May 20, 1908, of lands sold under said act and bid in by the State for drainage charges, whether said lands are contiguous or noncontiguous to his unperfected entry.

**JONES, *First Assistant Secretary:***

Leslie D. Judy has appealed from decision of June 8, 1915, by the Commissioner of the General Land Office, holding for cancellation his entry for lot 2, and SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 31, T. 159 N., R. 30 W., 5th P. M., Crookston, Minnesota, land district.

Said entry was made under the provisions of the act of May 20, 1908 (35 Stat., 169), which extended the drainage laws of the State of Minnesota to public lands subject to entry, and also to lands which have been entered but upon which no final certificates have issued. Such lands are subject to the charges for drainage to the same extent and in the same manner in which lands of a like character held in private ownership are, or may be, subject to said laws.

Instructions were issued April 24, 1913 (42 L. D., 104), with reference to said act. Therein it is instructed that where sales are made of lands for the drainage charges, purchasers must have the qualifications of a homestead entryman; that the tracts purchased need not be contiguous; that the lands so offered may be bid in by the State, but that patent to the State can not be issued for any lands so bid in;

however, the State can sell the lands bid in by it to qualified individuals who may make the payments and submit proof of their qualifications to the register and receiver of the local land office, and thereby secure patent. Section 5 of said instructions provides that a previous entry under the homestead law will not prevent purchase at a sale of the lands in amount which does not exceed 160 acres, including the land previously entered, provided the previous entry did not exhaust the full homestead right.

The Commissioner appears to have considered this purchase invalid, because the purchaser was not qualified under any provision of law to make homestead entry for this particular land, inasmuch as the purchaser has an existing homestead entry for 80 acres of noncontiguous land, and would not be qualified to make another homestead entry for land noncontiguous to the existing entry until final proof shall have been submitted on the first entry, citing Sec. 6 of the act of March 2, 1889 (25 Stat., 854).

It appears that on August 21, 1914, Judy made an original homestead entry for the SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$  and NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 1, T. 158 N., R. 31 W., 5th P. M., Crookston series, and that final proof has not been submitted thereon. Said land is not contiguous to the land embraced in the entry here under consideration.

It should be noted that the entry here in question is not a homestead entry; no residence or improvement is required thereon. This is a purchase from the State, the land having been sold under the terms of the said act of 1908, and bid in by the State. The State assigned all of its interest in the said land to the claimant, and issued to him State assignment certificate. The entryman did not exhaust his full homestead right by making the first entry containing 80 acres, but would be entitled to make entry for 80 acres additional and contiguous thereto under section 2 of the act of April 28, 1904 (33 Stat., 527). Of course, any additional entry under the latter act could only be for lands contiguous to the original entry, but the entry here under consideration is not a homestead entry, and the conditions named in the latter act are not applicable to the land in question. The law provides that a purchaser must be qualified to make entry under the homestead laws, but the burdens and conditions of a homestead entry are not imposed upon the lands purchased. Such entry is a cash entry. The question to be considered respecting the qualifications of the purchaser, is whether such purchaser has the qualifications to make homestead entry under any circumstances—not necessarily for the land purchased, but for any land—to the extent of the acreage purchased under this act.

The Department is of the opinion, and so holds, that the claimant here, upon the record presented, was a qualified purchaser, and therefore the decision appealed from is reversed.

**FORT BERTHOLD ALLOTMENTS.**

*Instructions, October 22, 1915.*

**EXCHANGE ALLOTMENTS UNDER ACT OF OCTOBER 19, 1888—PATENT—COAL LANDS.**

Where a trust patent covering an allotment on the Fort Berthold Indian reservation was surrendered and relinquished for cancellation and other land selected in lieu thereof under the provisions of the act of October 19, 1888, new patent of like form and legal effect should issue for the lieu land so selected, as authorized by said act, notwithstanding the selected land has been classified and withdrawn as valuable for coal under the act of June 1, 1910, where it appears that the lieu land allotment was made in the field prior to the passage of the act of 1910 and was approved for patent by the Secretary of the Interior prior to the classification and withdrawal of the land as coal.

*JONES, First Assistant Secretary:*

Under date of September 16, 1910, this Department approved 53 changes in allotment on the Fort Berthold Indian reservation, North Dakota. In connection with said schedule of allotments it was stated that the allotment selections were in townships surveys of which would be complete in the near future. The trust patents covering the original allotments were surrendered and properly relinquished for cancellation, and the Commissioner of the General Land Office was directed to issue new patents of like form and legal effect for the lieu lands sought, "as authorized by the act of October 19, 1888 (25 Stat., 611)." Trust patents, however, were not issued because of the reported coal character of a large part of the land, and because of a reservation thereof.

It appears that the Director of the Geological Survey, on April 17, 1911, submitted to the Indian Office his report showing that the tracts therein described, which include very many of these exchange allotments, covering an area of over 2000 acres, were coal lands. Allotted lands so reported to contain coal are tracts situate in T. 147 N., Rs. 87, 88, and 89 W., T. 148 N., Rs. 88 and 89 W., T. 149 N., R. 89 W., T. 150 N., R. 92 W.

Thereafter, pursuant to a request from the Indian Office, the Director of the Geological Survey prepared and submitted for approval a withdrawal order covering such lands. Said order is in part as follows:

In pursuance of the authority conferred by act of Congress dated June 1, 1910 (36 Stat., 455), the following lands which have been classified as coal land by the Director of the Geological Survey, are hereby withdrawn from allotment, or other disposition, pending provision by Congress for their disposition.

This withdrawal order was signed by former Secretary Fisher on June 27, 1911, and on the same day referred to the Commissioner of Indian Affairs and the Commissioner of the General Land Office for appropriate action.

In a letter from the Indian Office, dated August 9, 1912, it was stated that all these exchange allotments were made in the field prior to June 1, 1910, on which date the above cited act was passed, which contains an inhibition against allotting the classified and reserved coal lands, but the opinion is expressed that these allottees were entitled to receive patents on their lieu allotments of the same form and legal effect as those issued for their original allotments, notwithstanding the reported coal character of these lands.

Section 23 of the act of March 3, 1891 (26 Stat., 1032), contains the original agreement of cession of a part of the Fort Berthold Indian reservation. One article, namely Article VI, of the agreement was modified by Congress and the modified agreement was accepted and became effective under proclamation of May 20, 1891 (27 Stat., 979). Article III provides for allotments in severalty to the Indians. Article IV is as follows:

That upon the approval of the allotments provided for in the foregoing article by the Secretary of the Interior, he shall cause patents to issue therefor, in the name of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs, according to the laws of the Territory of Dakota, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs as aforesaid in fee, discharged of said trust and free of all charge or incumbrance whatsoever.

It will be noted that the above terms and conditions of patent are essentially similar to the provisions of the general allotment act of February 8, 1887 (24 Stat., 388), with this exception, that no power is granted to the Executive to enlarge the trust patent.

The act of March 1, 1907 (34 Stat., 1042), contains a further provision respecting the Fort Berthold allotments as follows:

That the Secretary of the Interior be, and he is hereby, authorized to cause an allotment of eighty acres to be made from the lands of the Fort Berthold Reservation, including the lands to be restored, to each member of the several tribes belonging on and occupying said reservation, now living and to whom no allotment has heretofore been made; and where any allotment of less than eighty acres has heretofore been made, the allottee, if now living, shall be allowed to take an additional allotment, which with the land already allotted shall not exceed eighty acres.

The act of June 1, 1910 (36 Stat., 455), provided for a further reduction of the reservation and authorized and directed the Secretary to cause the unsurveyed part to be surveyed and authorized the sale and disposal, as therein provided, of—

all the surplus unallotted and unreserved lands within that portion of said reservation lying and being east and north of the Missouri River, and he shall cause an examination to be made of said lands by the Geological Survey; and if there be found any lands bearing coal or other mineral, the Secretary of the

Interior is hereby authorized to reserve them from allotment or other disposition until Congress shall provide for their disposal: *Provided*, That any Indians to whom allotments may have been made within the area described herein may, in case they elect to do so before said lands are offered for sale, relinquish the same and select allotments in lieu thereof within the area in which the additional allotments hereinafter provided for are to be made.

Section 2 provided for additional allotments to "be made on that part of the reservation lying west and south of the Missouri River," or in certain specifically mentioned townships lying east and north of the river. "All allotments of land in the townships specifically described and lying north and east of the Missouri River shall be made prior to a date to be fixed by the Secretary of the Interior, which date shall be not less than six months from and after the date of approval of this act."

The act of August 3, 1914 (38 Stat., 681), provided for a classification and appraisal of the surface of the reserved coal area on the reservation and a sale and disposition thereof in accordance with the act of June 1, 1910, with a reservation of the coal. Provision was also made for the disposal of the reserved coal deposits.

In passing it may be stated that all the townships in which the present exchange allotments are situated, except township 149 N., range 89 W., are among the specific townships mentioned and described in section 2 of the act of June 1, 1910, within which additional allotments under that section were permitted.

After the passage of said act and before the coal classification and withdrawal was made many allotments under section 2 were made in the coal area, and in order to secure recognition of such allotments and give the allottees relief Joint Resolution No. 11, of April 3, 1912 (37 Stat., 631), was passed, which expressly provided that allotments under the act of 1910 might be made on lands classified as coal, with a reservation in the patent of the coal deposits. The exchange allotments here involved were not made under or pursuant to section 2 of the act of 1910, and are not within the scope or contemplation of said joint resolution.

Section 2 of the act of October 19, 1888 (25 Stat., 611, 612), authorizes exchange allotments and reads as follows:

The Secretary of the Interior is hereby authorized, in his discretion, and whenever for good and sufficient reason he shall consider it to be for the best interest of the Indians, in making allotments under the statute aforesaid, to permit any Indian to whom a patent has been issued for land on the reservation to which such Indian belongs, under treaty or existing law, to surrender such patent with formal relinquishment by such Indian to the United States of all his or her right, title, and interest in the land conveyed thereby, properly indorsed thereon, and to cancel such surrendered patent: *Provided*, That the Indian so surrendering the same shall make a selection, in lieu thereof, of other land and receive patent therefor, under the provisions of the act of February eighth, eighteen hundred and eighty-seven,

The act of March 3, 1909 (35 Stat., 781, 784), also authorizes exchange allotments and reads in part as follows:

That if any Indian of a tribe whose surplus lands have been or shall be ceded or opened to disposal has received or shall receive an allotment embracing lands unsuitable for allotment purposes, such allotment may be canceled and other unappropriated, unoccupied, and unreserved land of equal area, within the ceded portions of the reservation upon which such Indian belongs, allotted to him upon the same terms and with the same restrictions as the original allotment, and lands described in any such canceled allotment shall be disposed of as other ceded lands of such reservation.

The act of April 23, 1904 (33 Stat., 297), also recognizes the authority of the Secretary of the Interior to cancel trust patents where the cancellation is sought for the purpose of making a lieu allotment.

In reference to allotments on mineral lands in the Shoshone reservation, the Assistant Attorney General of this Department, on December 24, 1913, rendered an opinion in which it was held that allotments could be made notwithstanding the lands had been withdrawn as phosphate or oil lands, or had been classified as coal lands. On August 1, 1912, the former First Assistant Secretary held, with reference to Indian allotments on the Fort Peck reservation, that such allotments might be made and perfected notwithstanding the subsequent classification of the lands as coal in character. On July 1, 1915, this Department, however, in the matter of allotments on the Fort Peck Indian reservation, reached the conclusion that exchange allotments and original allotments could not properly be made upon lands known or classified to be coal lands, but should be made only upon nonmineral areas. At the same time, however, the Commissioner of the General Land Office, with respect to some Fort Peck allotments, was advised as follows:

In view of the fact that the allotments were made prior to the time when they were known to be coal in character, and of the departmental decision in question, it would appear that patents should issue in regular order upon these allotments, in the absence of other objection.

The Fort Berthold allotments here in question were made in the field prior to the passage of the act of June 1, 1910, and as before stated were not made pursuant thereto. They were regularly scheduled and thereafter submitted to the Department for approval, and approved for trust patent by this Department (September 16, 1910), all long prior to the report and classification respecting coal (April 17, 1911) and to the withdrawal order (June 27, 1911) under the act of June 1, 1910. I am, therefore, of the opinion that these allotments and the departmental approval of the same should stand and be held

intact, notwithstanding the subsequent coal classification and withdrawal, and that in the absence of other objections the proper trust patents should be issued. The Commissioner of the General Land Office will accordingly proceed with these allotments and be governed by the views above expressed.

### CATHERINE BAART.

*Decided October 22, 1915.*

#### DESERT ENTRY WITHIN RECLAMATION PROJECT—ASSIGNMENT—ACT JULY 24, 1912.

Where a desert land entry within a reclamation project is assigned in part under the act of July 24, 1912, the entry should be subdivided into farm units as required by paragraphs 116 to 120 of the regulations of February 6, 1913; but where such an entry is assigned in its entirety the establishment of a farm unit is unnecessary.

*JONES, First Assistant Secretary:*

This is an appeal by Catherine Baart, assignee of Nels M. Johnson, from a decision of the Commissioner of the General Land Office dated June 12, 1915, holding for rejection assignment of desert land entry 0200 for the SE.  $\frac{1}{4}$ , Sec. 33, T. 22 N., R. 2 W., M. P. M., Great Falls, Montana.

The entry in this case was made March 7, 1903, by Nels M. Johnson and was assigned to the present claimant on June 17, 1914. The lands were withdrawn under second form October 17, 1903, and under first form October 4, 1909, in accordance with the provisions of the act of June 17, 1902 (32 Stat., 388), and are now embraced within the exterior limits of the Sun River irrigation project.

Upon consideration of the assignment, the Commissioner found and held that paragraphs 116 to 120 of the General Reclamation Circular, approved September 6, 1913 (42 L. D., 349), which require application for establishment of farm unit, had not been complied with, and from this action claimant has appealed.

Under the act of July 24, 1912 (37 Stat., 200), desert land entries covering lands within the exterior limits of a government reclamation project may be assigned in whole or in part. If the entry is assigned in whole, there would appear to be no reason for the establishment of a farm unit. Paragraph 117 of the regulations referred to is evidently intended to provide for and require the establishment of farm units where desert land entries are assigned in part.

In the case here under consideration, where entry has been assigned in whole, establishment of the farm unit appears to be unnecessary, and the decision appealed from is accordingly reversed.

## CHARLES H. KING.

*Decided October 22, 1915.*

## SOLDIERS ADDITIONAL—REJECTION OF APPLICATION—RETURN OF PAPERS.

Where an application to locate a soldiers' additional right is rejected for insufficient evidence, and there is no adjudication of the invalidity of the right sought to be located, the papers filed in connection with the application may be returned to the applicant.

JONES, *First Assistant Secretary*:

Charles H. King has appealed from decision of July 6, 1915, denying his application for return of the papers filed in support of his claim for an additional homestead right based upon assignment of the right of the heirs of John R. Blackwell, who, it is alleged, served in the Army of the United States during the Civil War for the required period and who made homestead entry at Washington, Arkansas, March 2, 1868, for 80 acres.

The Commissioner denied return of the papers for the reason that it appeared that application had theretofore been made to locate the alleged additional right based upon assignment of the alleged widow of the soldier, which application was rejected because of insufficient evidence and the papers connected with that application returned to the attorney for the applicant. Reference was also made to the application of Frank A. Hadsell, filed March 1, 1905, at Cheyenne, Wyoming, to enter 80 acres, as assignee of George T. Blackwell as heir of the soldier.

It appears that George T. Blackwell, claiming as the sole heir of said soldier, attempted to assign the additional right to Zachary T. Hedges on February 7, 1901, and as appears from the papers, Hedges on May 22, 1901, assigned the right to William Hines. Hines applied to locate the right at Lander, Wyoming, for 80 acres. It is stated by the Commissioner that said application was rejected February 6, 1907, and the case closed, as Hines failed to appeal from said action. It was stated that George T. Blackwell, as heir of the soldier, sold the right to Hedges September 10, 1901, and that Hedges transferred the right to Hadsell, September 24, 1901. The Hadsell application was rejected because the alleged military service in Company G, 2d Regiment Arkansas Cavalry, was not verified. The true service seems to have been Company G, 2d Regiment Arkansas Infantry.

Hines has transferred the right to Charles H. King, and an additional assignment has been procured from two other alleged heirs of the soldier, and it is now claimed that King holds the only assignment of all of the surviving heirs. Affidavits have been filed designed to show that the widow of the soldier remarried and died

many years ago, and that neither the soldier nor the widow had transferred or used the right.

No adjudication has been made that the claim of additional right inuring to the soldier is invalid. But the Commissioner denied return of the papers because of the said outstanding assignment by the alleged widow and because in his opinion her death had not been satisfactorily shown.

It is not necessary that a case should be made complete or that it should be adjudged complete as a condition for return of papers where an application to enter has been denied. The Department is not called upon to adjudicate as to the validity of this claim or the weight of the evidence in support thereof, but inasmuch as the claim has not been adjudicated as invalid it is deemed proper to return the papers in connection with the Hines and King assignments so that application may be made if desired to locate public land, and when such application shall be filed it will be proper at that time to adjudicate the sufficiency of proof looking to the establishment of the claim. It is, therefore, directed that the papers be returned.

The decision appealed from is reversed.

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### STATE OF MINNESOTA v. LAMBRECHT.

*Decided October 25, 1915.*

#### SWAMP LAND—SETTLER—RIGHT OF CONTEST—TRANSFEREE.

The right conferred upon a settler by the circular of December 13, 1886, to contest the claim of the State under its swamp land grant to the land settled upon, is personal to the settler and can not be transferred.

JONES, *First Assistant Secretary*:

The State of Minnesota has appealed from the decision of the Commissioner of the General Land Office, dated May 21, 1915, rejecting its swamp-land list for lot 7, Sec. 11, T. 145 N., R. 25 W., 5th P. M., Cass Lake, Minnesota, land district, and holding intact the homestead entry of Adolph C. Lambrecht for said tract.

On May 29, 1905, the lot in question was included by the United States Surveyor General for Minnesota in a swamp-land list, based on the field notes of the official survey. On February 9, 1909, the Department ordered that the land in the ceded Chippewa Indian Reservation in Minnesota be examined in the field as to its swamp or non-swamp condition, and this lot was again reported to be swamp.

On July 26, 1911, Lambrecht made homestead entry for the land, one Grant having on that day relinquished the homestead entry made on July 22, 1904, more than seven years before.

On November 8, 1911, the Commissioner held Lambrecht to be successor to the rights of Grant, and directed the local office to call upon him for a nonswamp affidavit, and should he furnish such affidavit, to adjust the conflict under the circular of December 13, 1886 (5 L. D., 279). Lambrecht filed a corroborated nonswamp contest affidavit, the State appearing specially to object to the proceedings, upon the ground that Lambrecht was not entitled to contest the swamp list, for the reason that he was not a settler upon the land before March 14, 1910, when the State's list, based upon the return of the field examination, was filed in the local office. The objection was overruled by the register and receiver, and Lambrecht testified in his own behalf. The State declined to cross-examine him, and on its part offered no evidence, whereupon the local office found for Lambrecht, and the Commissioner in the decision appealed from affirmed their action.

If it were conceded, as held by the Commissioner, that Lambrecht, under the facts disclosed, could be considered as the successor of Grant, it is clear that Lambrecht succeeded to no substantial right. Lambrecht's testimony discloses very clearly that Grant had in no sense maintained a *bona fide* settlement upon the land and he had forfeited his right under his entry by failure to make proof within its statutory life. The right conferred upon a settler by the circular of December 13, 1886, *supra*, to contest swamp claims to land subsequently asserted by the State is a provision for the protection of *bona fide* settlers. It is a personal right, like the preference right accorded to successful contestants and to settlers upon public land, and it has been uniformly held by the Department that personal rights of this character are not transferable.

This land has twice been found to be swamp in character in the manner provided in the regulations, and it is the judgment of the Department that it would be a violation of the agreement entered into between the Government and the State of Minnesota to again have its claim to this tract called in question in a proceeding not warranted by the regulations of December 13, 1886, *supra*. Lambrecht's settlement upon this land was long after the presentation of the State's claim and the adjudication of its swamp character, and his entry therefore must be, and accordingly is hereby, canceled.

The decision appealed from is reversed.

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#### STATE OF MINNESOTA v. LAMBRECHT.

Motion for rehearing of departmental decision of October 25, 1915, 44 L. D., 488, denied by First Assistant Secretary Jones December 1, 1915.

## PETER GEISS.

*Decided October 25, 1915.*

## FORT RICE MILITARY RESERVATION—SCHOOL LAND—ACT MARCH 2, 1907.

A selection by the State of North Dakota under the act of March 2, 1907, in lieu of lands embraced in a homestead entry erroneously allowed for part of a school section in the Fort Rice abandoned military reservation which had passed to the State, constitutes a waiver of all right of the State to the lands assigned as base, and no rights under the school grant reattach to said lands in event of cancellation of the homestead entry.

JONES, *First Assistant Secretary*:

Peter Geiss has appealed from the decision of the Commissioner of the General Land Office, dated May 11, 1915, holding for cancellation his homestead entry, made on May 6, 1912, for the NW.  $\frac{1}{4}$ , Sec. 36, T. 136 N., R. 80 W., 5th P. M., Bismarck, North Dakota, land district.

The land above described is within the boundaries of the Fort Rice military reservation, which was placed under the control of this Department on July 22, 1884, for disposal under the act of July 5, 1884 (23 Stat., 103). The land was surveyed in 1887, and title thereto passed to North Dakota, under its grant in aid of common schools, upon the admission of the State into the Union.

On June 5, 1905, one Harrington was erroneously allowed to make entry of said land, and on June 11, 1908, the State selected other land in lieu thereof, under the act of March 2, 1907 (34 Stat., 1218). Harrington's entry was canceled by the Commissioner of the General Land Office on April 19, 1912. For some reason not appearing of record, the indemnity selection made by the State remained intact on the records until held for cancellation in the decision from which this appeal is prosecuted. The only reason assigned for the rejection of the indemnity selection was that title to the land became complete in the State upon the cancellation of the Harrington entry.

The Department is unable to concur in the conclusion reached by the Commissioner in this matter. The title of the State of North Dakota to the land under consideration was complete under and by virtue of its admission into the Union as a State. The entry of Harrington had no validity until the State accepted the provisions of the act of March 2, 1907, *supra*, by the selection of other lands in lieu of said tract. In said act of March 2, 1907, it was provided:

That such selection of land by such State shall be a waiver of its right to lands embraced in said homestead entry.

A waiver of this character under the conditions that induced the enactment of the law had the force and effect of conveying to the United States the title held by the State, and no reason exists why the Government should now give to the State the land in place, to the detriment of a *bona fide* homestead entryman whose entry was

permitted by the land department to remain undisturbed for more than three years. The tract is government land, not by virtue of the settlement and entry of Harrington, but through the voluntary action of the State of North Dakota under a special statute.

Conditions sought to be remedied by the act of March 2, 1907, *supra*, are wholly different from those arising under the act of February 28, 1891 (26 Stat., 796). As hereinbefore stated, title of the State to the land under consideration was complete upon its admission into the Union, and it has conveyed that title to the United States. The act of February 28, 1891, *supra*, deals with lands as to which the right of the State may be defeated by settlements, reservations, or dispositions thereof by the United States prior to the grant to the State. In such cases the State takes indemnity where the lands in place are lost, but where the cloud upon its title is removed, it may take the land in place under the express terms of the law.

The decision appealed from is accordingly reversed.

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### MAUD MOSSMAN ET AL.

*Decided October 26, 1915.*

#### ADDITIONAL ALLOTMENT—SEC. 4, ACT FEBRUARY 8, 1887—NONCONTIGUOUS LANDS.

Allotment on the public domain under the 4th section of the general allotment act of February 8, 1887, additional to an allotment previously allowed and upon which trust patent has issued, can not be allowed for lands noncontiguous to the original allotment.

#### JONES, *First Assistant Secretary*:

A motion for rehearing has been filed *in re* departmental decision of August 4, 1915 (not reported), which affirmed the action of the Commissioner of the General Land Office rejecting the applications of Maud Mossman, a Menominee Indian, for additional allotments on the public domain for herself and minor child, Donald John Mossman, under the fourth section of the general allotment act of February 8, 1887 (24 Stat., 388), as amended.

The rejection of these additional allotment applications was for the reason that the lands embraced therein are not contiguous to those covered by allotments previously made to these parties, and upon which trust patents have issued. The fact that original allotments not only have been allowed but trust patents have been issued therefor, is sufficient of itself to justify the rejection of the additional allotment applications. It is urged in the motion for rehearing, however, that as the practice has been to permit allotments under certain conditions of reservation lands in noncontiguous tracts, and as the fourth section of the act of February 8, 1887, as amended, provides that an Indian who is qualified to take lands thereunder on the public domain is entitled "to have the same allotted to him

or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations," the present applications are authorized by law.

Neither the act of February 8, 1887, nor the acts amendatory thereof, contain any provision for allotting reservation lands in non-contiguous tracts, much less lands on the public domain. The act of 1887 provides, among other things, for allotting reservation lands "in such manner as to embrace the improvements of the Indians making the selection." In order to save to allottees their improvements, and for other good and sufficient reasons shown, it has been permitted in certain cases to select allotments of reservation lands in noncontiguous tracts. But this course has been the exception. The general rule even as respects allotment of reservation lands has been to require that the tracts should be contiguous. The act of 1887 was before the Department for instructions soon after its passage. One of the questions considered was as to whether it was necessary that lands taken in allotment under the fourth section should be contiguous, if there was not enough in one body to fill the allotment. Referring to the practice of allowing allotments of reservation lands to be taken in noncontiguous tracts, it was said in *Indian Lands—Allotments* (8 L. D., 647):

This departure from the rule, for many reasons, might be proper with regard to the division of an Indian reservation, which is entirely under the control and supervision of the Indian Office. But, when the question is presented in connection with the allotment of portions of the public domain, "not otherwise appropriated," with the change of conditions, the reasons applicable to the reservation disappear, and those, which have so long governed the land department in the administration of the settlement laws, should assume control. I can not agree with the Commissioner of Indian Affairs, that the practice, or "manner," which has thus obtained in the allotments within a reservation should, under the provisions of this act, be applied outside of a reservation. Whilst allotments within reservations may be made, as stated, without regard to contiguity, and whilst in my opinion it is not required that allotments to minor children under the fourth section shall be contiguous to that made to the head of a family; it is required that each allotment made to an individual, whether the head of a family, a single adult, or a minor child, where such allotment embraces more than one legal subdivision, must be composed of contiguous tracts as the ordinary disposition of the public domain under the settlement law.

There is a clear distinction in this matter between allotments of reservation lands, which are held in common by the Indians and where no settlement is required of allottees, and allotments under the fourth section on the public domain where settlement is a prerequisite. That section has been held to be in its essential elements a settlement law intended to be administered, so far as practicable, like any other law based upon settlement. The general rule as to contiguity above laid down under the act of 1887, has since been followed. There is nothing in the subsequent act amending that of

1887 calling for a different rule, nor is there any valid reason for making an exception in these particular cases.

The motion for rehearing is hereby denied.

**HARRY E. MARTIN.**

*Decided October 27, 1915.*

**INDIAN LANDS—RELINQUISHMENT OF ENTRY—CREDIT FOR PURCHASE PRICE.**

Where all right to the annual instalments of purchase price paid on an entry of irrigable lands within the Yuma or Colorado River Indian reservation, made under section 25 of the act of April 21, 1904, is assigned and the entry relinquished, the assignee, upon making entry of the land, is entitled to credit for such instalments.

**JONES, *First Assistant Secretary:***

April 6, 1910, Frederick E. Hunter made homestead entry No. 08167, at Los Angeles, California, for farm unit "C," or lot 3, Sec. 4, T. 16 S., R. 23 E., S. B. M., containing 45.14 acres, under section 25 of the act of April 21, 1904 (38 Stat., 224). This section provided for the irrigation of lands on the Yuma and Colorado River Indian reservations. It provided in part as follows:

That there shall be reserved for and allotted to each of the Indians belonging on the said reservations five acres of the irrigable lands. The remainder of the lands irrigable in said reservations shall be disposed of to settlers under the provisions of the reclamation act: *Provided further,* That there shall be added to the charges required to be paid under said act by settlers upon the unallotted Indian lands such sum per acre as in the opinion of the Secretary of the Interior shall fairly represent the value of the unallotted lands in said reservations before reclamation; said sum to be paid in annual installments in the same manner as the charges under the reclamation act. Such additional sum per acre, when paid, shall be used to pay into the reclamation fund the charges for the reclamation of the said allotted lands, and the remainder thereof shall be placed to the credit of said Indians and shall be expended from time to time, under the direction of the Secretary of the Interior, for their benefit.

The public notice of January 12, 1910, provided, in paragraph 6, that the value of the lands before reclamation, ten dollars per acre for the total area in each entry, should be payable in not more than ten annual instalments, the first of which should be one dollar per acre, and the remaining instalments at the rate of one dollar per acre per annum until fully paid. The same paragraph provided for a building charge of \$55 per acre of irrigable lands, and an operation and maintenance charge of one dollar per acre. Hunter paid, upon April 6, 1910, one instalment of the purchase money, \$45.14, and another upon August 22, 1911; upon May 16, 1913, he relinquished his entry. Upon the same day, Allen Thurman Stadler made homestead entry 018797 for the same tract. Stadler paid three instalments of the purchase money, each of \$45.14, on May 16, 1913, October 16, 1913, and January 15, 1915. Upon December 29, 1914, Stadler executed a relinquishment of his entry, the relinquishment

being filed in the local land office January 15, 1915. Upon that day Harry E. Martin filed homestead application No. 025545 for the same tract, paying \$45.14 on account of the purchase price, which entry was allowed February 23, 1915. Upon January 21, 1915, Stadler executed a paper entitled "Assignment of Credits for all Indian Payments." This paper states in part as follows:

he acquired by assignment all payments hereinafter mentioned and that he is entitled to credits of all said payments hereinafter mentioned, namely, the first, second, third, fourth and fifth Indian instalment of payments and any and all Indian instalments made prior to and including a certain payment made by him to the Land Office at Los Angeles of \$45.14, made January 13th, 1915, for which he holds receipt, and that he does for value received hereby assign to Harry E. Martin all of his rights and title in and to any and all credits for charges heretofore paid on the Indian payments, or being more specifically stated, being that portion of the purchase money due under his contract with the government for said farm unit.

No further evidence of any assignment from Hunter to Stadler is presented. By decisions of April 16, 1915, and May 18, 1915, the Commissioner of the General Land Office rejected Martin's application to have the final payments credited to him under the assignment by Stadler. Martin has appealed to the Department.

The act of April 21, 1904, *supra*, provides that the sum representing the value of the unallotted land before reclamation, shall "be paid in annual instalments in the same manner as the charges under the reclamation act."

Paragraph 94 of the regulations of February 6, 1913, as amended to September 6, 1913 (42 L. D., 348, 386), recognizes assignments of credits as to building charges, the paragraph reading as follows:

A person who has entered lands under the reclamation law, and against whose entry there is no pending charge of noncompliance with the law or regulations, or whose entry is not subject to cancellation under this act, may relinquish his entry to the United States and assign to a prospective or succeeding entryman any credit he may have for payments already made under this act on account of said entry, and the party taking such assignment may, upon making proper entry of the land at the time of the filing of the relinquishment, if subject to entry, receive full credit for all payments thus assigned to him, but must otherwise comply in every respect with the homestead law and the reclamation law.

Since the money on account of the Indian lands is to be paid in annual instalments, in the same manner as the charges under the reclamation act, it follows that the same regulations apply; and, under paragraph 94 of the regulations of February 6, 1913, the credits here sought by Martin should be granted. He should, however, be required to furnish further evidence of the assignment from Hunter to Stadler.

The Commissioner's decision is accordingly reversed, and the matter remanded for further proceedings in harmony herewith.

# RULES OF PRACTICE.

[Approved December 9, 1910; effective February 1, 1911; reprint November 10, 1915, with amendments.]

## I.

### PROCEEDINGS BEFORE REGISTERS AND RECEIVERS.

#### INITIATION OF CONTESTS.

**RULE 1.** Contests may be initiated by any person seeking to acquire title to, or claiming an interest in, the land involved, against a party to any entry, filing, or other claim under laws of Congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim, not shown by the records of the Land Department.

Any protest or application to contest filed by any other person shall be forthwith referred to the Chief of Field Division, who will promptly investigate the same and recommend appropriate action.

#### APPLICATION TO CONTEST.

**RULE 2.** Any person desiring to institute contest must file, in duplicate, with the register and receiver, application in that behalf, together with statement under oath containing:

(a) Name and residence of each party adversely interested, including the age of each heir of any deceased entryman.

(b) Description and character of the land involved.

(c) Reference, so far as known to the applicant, to any proceedings pending for the acquisition of title to or the use of such lands.

(d) Statement, in ordinary and concise language, of the facts constituting the grounds of contest.

(e) Statement of the law under which applicant intends to acquire title and facts showing that he is qualified to do so.

(f) That the proceeding is not collusive or speculative, but is instituted and will be diligently pursued in good faith.

(g) Application that affiant be allowed to prove said allegations and that the entry, filing, or other claim be canceled.

(h) Address to which papers shall be sent for service on such applicant.

**RULE 3.<sup>1</sup>** The statements in the application must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation, and these facts must be set forth in his affidavit.

**RULE 4.** The register and receiver may allow any application to contest without reference thereof to the commissioner; but they must immediately forward copy thereof to the Commissioner of the General Land Office, who will promptly cause proper notations to be made upon the records, and no patent or other evidence of title shall issue until and unless the case is closed in favor of the contestee.

#### CONTEST NOTICE.

**RULE 5.** The register and receiver shall act promptly upon all applications to contest, and upon the allowance of any such application shall issue notice, directed to the persons adversely interested, containing:

(a) The names of the parties, description of the land involved, and identification, by appropriate reference, of the proceeding against which the contest is directed.

(b) Notice that unless the adverse party appears and answers the allegation of said contest within 30 days after service of notice the allegations of the contest will be taken as confessed.

(For contents of notice when publication is ordered, see Rule 9.)

#### SERVICE OF NOTICE.

**RULE 6.** Notice of contest may be served on the adverse party personally or by publication.

**RULE 7.** Personal service of notice of contest may be made by any person over the age of 18 years, or by registered mail; when served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing personal delivery to the party to whom the same is directed; when service is made personally, proof thereof shall be by written acknowledgment of the person served, or by affidavit of the person serving the same, showing personal delivery to the party served; except when service is made by publication, copy of the affidavit of contest must be served with such notice.

**RULE 8.<sup>2</sup>** Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if service by publication is ordered, unless publication is commenced within 20 days after such order and proof of publication is made not later than 20 days after the fourth

<sup>1</sup> Amended Sept. 23, 1915.

<sup>2</sup> Amended Nov. 15, 1912.

publication, as specified in Rule 10, the contest shall abate: *Provided*, That if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.

#### SERVING NOTICE BY PUBLICATION.

RULE 9. Notice of contest may be given by publication only when it appears, by affidavit by or on behalf of the contestant, filed within 30 days after the allowance of application to contest and within 10 days after its execution, that the adverse party can not be found, after due diligence and inquiry, made for the purpose of obtaining service of notice of contest within 15 days prior to the presentation of such affidavit, of the postmaster at the place of address of such adverse party appearing on the records of the land office and of the postmaster nearest the land in controversy and also of named persons residing in the vicinity of the land.

Such affidavit must state the last address of the adverse party as ascertained by the person executing the same.

The published notice of contest must give the names of the parties thereto, description of the land involved, identification by appropriate reference of the proceeding against which the contest is directed, the substance of the charges contained in the affidavit of contest, and a statement that upon failure to answer within 20 days after the completion of publication of such notice the allegations of said affidavit of contest will be taken as confessed.

The affidavit of contest need not be published.

There shall be published with the notice a statement of the dates of publication.

RULE 10.<sup>1</sup> Service of notice by publication shall be made by publishing notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be printed in such county, then in a newspaper printed in the county nearest to such land.

Copy of the notice as published, together with copy of the affidavit of contest, shall be sent by the contestant within 10 days after the first publication of such notice by registered mail directed to the party for service upon whom such publication is being made at the last address of such party as shown by the records of the land office and also at the address named in the affidavit for publication, and also at the post office nearest the land.

Copy of the notice as published shall be posted in the office of the register and also in a conspicuous place upon the land involved,

<sup>1</sup>Amended Mar. 7, 1911.

such posting to be made within 10 days after the first publication of notice as hereinabove provided.

**RULE 11.** Proof of publication of notice shall be by copy of the notice as published attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the same, showing the publication thereof in accordance with these rules.

Proof of posting shall be by affidavit of the person who posted notice on the land, and the certificate of the register as to posting in the local land office.

#### DEFECTIVE SERVICE OF NOTICE.

**RULE 12.** No contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served; but in such case the time to answer may be extended in the discretion of the register and receiver.

#### ANSWER BY CONTESTEE.

**RULE 13.** Within thirty days after personal service of notice and affidavit of contest as above provided, or, if service is made by publication, within twenty days after the fourth publication, as prescribed by these rules, the party served must file with the register and receiver answer, under oath, specifically meeting and responding to the allegations of the contest, together with proof of service of a copy thereof upon the contestant by delivery of such copy at the address designated in the application to contest, or personally in the manner provided for the personal service of notice of contest.

Such answer shall contain or be accompanied by the address at which all notices or other papers shall be sent for service upon the party answering.

#### FAILURE TO ANSWER.

**RULE 14.<sup>1</sup>** Upon the failure to serve and file answer as herein provided, the allegations of the contest will be taken as confessed, and the register and receiver will forthwith forward the case, with recommendation thereon, to the General Land Office, and notify the parties by registered mail of the action taken.

#### DATE AND NOTICE OF TRIAL.

**RULE 15.** Upon the filing of answer and proof of service thereof the register and receiver will forthwith fix time and place for taking testimony, and notify all parties thereof by registered-letter mail not less than 20 days in advance of the date fixed.

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<sup>1</sup> Amended July 2, 1915.

## PLACE OF SERVICE OF PAPERS.

**RULE 16.** Proof of delivery of papers required to be served upon the contestant at the place designated under clause "h" of Rule 2 in the application to contest, and upon any adverse party at the place designated in the answer, or at such other place as may be designated in writing by the person to be served, shall be sufficient for all purposes; and where notice of contest has been given by registered mail, and the registry-return receipt shows the same to have been received by the adverse party, proof of delivery at the address at which such notice was so received shall, in the absence of other direction by such adverse party, be sufficient.

Where a party has appeared and is represented by counsel, service of papers upon such counsel shall be sufficient.

## CONTINUANCE.

**RULE 17.** Hearing may be postponed because of absence of a material witness when the party applying for continuance makes affidavit, and it appears to the satisfaction of the officer presiding at such hearing, that—

(a) The matter to which such witness would testify, if present, is material.

(b) That proper diligence has been exercised to procure his attendance, and that his absence is without procurement or consent of the party on whose behalf continuance is sought.

(c) That affiant believes the attendance of said witness can be had at the time to which continuance is sought.

(d) That the continuance is not sought for mere purposes of delay.

**RULE 18.** One continuance only shall be allowed to either party on account of absence of witnesses, unless the party applying for further continuance shall, at the same time, apply for order to take the testimony of the alleged absent witnesses by deposition.

**RULE 19.** No continuance shall be granted if the opposite party shall admit that the witness on account of whose absence continuance is desired would, if present, testify as stated in the application for continuance.

Continuances will be granted on behalf of the United States when the public interest requires the same, without affidavit on the part of the Government.

## DEPOSITIONS AND INTERROGATORIES.

**RULE 20.** Testimony may be taken by deposition when it appears by affidavit that—

(a) The witness resides more than 50 miles, by the usual traveled route, from the place of trial.

(b) The witness resides without, or is about to leave, the State or Territory, or is absent therefrom.

(c) From any cause it is apprehended that the witness may be unable to, or will refuse to, attend the hearing, in which case the deposition will be used only in the event personal attendance of the witness can not be obtained.

RULE 21. The party desiring to take deposition must serve upon the adverse party and file with the register and receiver affidavit setting forth the name and address of the witness and one or more of the above-named grounds for taking such deposition, and that the testimony sought is material; which affidavit must be accompanied by proposed interrogatories to be propounded to the witness.

RULE 22. The adverse party will, within 10 days after service of affidavit and interrogatories, as provided in the preceding rule, serve and file cross-interrogatories.

RULE 23. After the expiration of 10 days from the service of affidavit for the taking of deposition and direct interrogatories, commission to take the deposition shall be issued by the register and receiver directed to any officer authorized to administer oaths within the county where such deposition is to be taken, which commission shall be accompanied by a copy of all interrogatories filed.

Ten days' notice of the time and place of taking such deposition shall be given, by the party in whose behalf such deposition is to be taken, to the adverse party.

RULE 24. The officer before whom such deposition is taken shall cause each interrogatory to be written out, and the answer thereto inserted immediately thereafter, and said deposition, when completed, shall be read over to the witness and by him subscribed and sworn to in the usual manner before the witness is discharged, and said officer will thereupon attach his certificate to said deposition, stating that the same was subscribed and sworn to at the time and place therein mentioned.

RULE 25. The deposition, when completed and certified as aforesaid, together with the commission and interrogatories, must be inclosed in a sealed package, indorsed with the title of the proceeding in which the same is taken, and returned by mail or express to the register and receiver, who will indorse thereon the date of reception thereof, and the time of opening said deposition.

RULE 26. If the officer designated to take the deposition has no official seal, certificate of his official character under seal must accompany the return of the deposition.

RULE 27. Deposition may, by stipulation filed with the register and receiver, be taken before any officer authorized to administer oaths, and either by oral examination or upon written interrogatories.

**RULE 28.** Testimony may, by order of the register and receiver and after such notice as they may direct, be taken by deposition before a United States commissioner, or other officer authorized to administer oaths near the land in controversy, at a time and place to be designated in a notice of such taking of testimony. The officer before whom such testimony is taken will, at the completion of the taking thereof, cause the same to be certified to, sealed, and transmitted to the register and receiver in the like manner as is provided with reference to depositions.

**RULE 29.** No charge will be made by the register and receiver for examining testimony taken by deposition.

**RULE 30.** Officers designated to take testimony will be allowed to charge such fees as are chargeable for similar services in the local courts, the same to be taxed in the same manner as costs are taxed by registers and receivers.

**RULE 31.** When the officer designated to take deposition can not act at the time fixed for taking the same, such deposition may be taken at the same time and place before any other qualified officer designated for that purpose by the officer named in the commission or by agreement of the parties.

**RULE 32.** No order for the taking of testimony shall be issued until after the expiration of time allowed for the filing of answer.

#### TRIALS.

**RULE 33.** The register and receiver and other officers taking testimony may exclude from the trial all witnesses except the one testifying and the parties to the proceeding.

**RULE 34.** The register and receiver will be careful to reach, if possible, the exact condition and status of the land involved in any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest; to this end said officers should, whenever necessary, personally interrogate and direct the examination of a witness.

**RULE 35.** In preemption cases the register and receiver will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming; the steps taken to mark and secure the claim; and the exact status of the land at that date as shown upon the records of their office.

**RULE 36.** In like manner, under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined.

**RULE 37.** Due opportunity will be allowed opposing claimants to cross-examine witnesses.

RULE 38. Objections to evidence will be duly noted, but not ruled upon, by the register and receiver, and such objections will be considered by the commissioner. Officers before whom testimony is taken will summarily stop examination which is obviously irrelevant.

RULE 39. At the time set for hearing, or at any time to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing.

When testimony is taken in shorthand the stenographic notes must be transcribed, and the transcription subscribed by the witness and attested by the officer before whom the testimony was taken: *Provided, however,* That when the parties shall, by stipulation, filed with the record, so agree, or when the defendant has failed to appear, or fails to participate in the trial, and the contestant shall in writing so request, such subscription may be dispensed with.

The transcript of testimony shall, in all cases, be accompanied by certificate of the officer or officers before whom the same was taken, showing that each witness was duly sworn before testifying, and, by affidavit of the stenographer who took the testimony, that the transcription thereof is correct.

RULE 40. If a defendant demurs to the sufficiency of the evidence, the register and receiver will forthwith rule thereon. If such demurrer is overruled, and the defendant elects to introduce no evidence, no further opportunity will be afforded him to submit proofs.

When testimony is taken before an officer other than the register and receiver, demurrer to the evidence will be received and noted, but no ruling made thereon, and the taking of evidence on behalf of the defendant will be proceeded with; the register and receiver will rule upon such demurrer when the record is submitted for their consideration.

If said demurrer is sustained, the register and receiver will not be required to examine the defendant's testimony. If, however, the demurrer be overruled, all the evidence will be considered and decision rendered thereon.

Upon the completion of the evidence in a contest proceeding, the register and receiver will render joint report and opinion thereon, making full and specific reference to the posting and annotations upon their records.

RULE 41. The register and receiver will, in writing, notify the parties to any proceeding of the conclusion therein, and that 15 days will be allowed from the receipt of such notice to move for new trial upon the ground of newly discovered evidence, and that if no motion for new trial is made, 30 days will be allowed from the receipt of such notice within which to appeal to the commissioner.

## NEW TRIAL.

**RULE 42.** The decision of the register and receiver will be vacated and new trial granted only upon the ground of newly discovered evidence, in accordance with the practice applicable to new trials in courts of justice: *Provided, however,* That no such application shall be granted except upon showing that the substantial rights of the applicant have been injuriously affected.

No appeal will be allowed from an order granting new trial, but the register and receiver will proceed at the earliest practicable time to retry the case, and will, so far as possible, use the testimony theretofore taken without reexamination of same witnesses, confining the taking of testimony to the newly discovered evidence.

**RULE 43.** Notice of motion for new trial, setting forth the grounds thereof, and accompanied by copies of all papers not already on file to be used in support of such motion, shall be served upon the adverse party, and, together with proof of service, filed with the register and receiver not more than 15 days after notice of decision; the adverse party shall, within 10 days after such notice, serve and file affidavits or other papers to be used by him in opposition to such motion.

**RULE 44.** Motions for new trial will not be considered or decided in the first instance by the commissioner or the Secretary of the Interior, or otherwise than on review of the decision thereof by the register and receiver.

**RULE 45.** If motion for new trial is not made, or if made and not allowed, the register and receiver will, at the expiration of the time for appeal, promptly forward the same, with the testimony and all papers in the case, to the commissioner, with letter of transmittal, describing the case by its title, nature of the contest, and the land involved.

The local officers will not, after forwarding of decision, as above provided, take further action in the case unless so instructed by the commissioner.

## FINAL PROOF PENDING CONTEST.

**RULE 46.** Where trial of a contest brought against any entry or filing has taken place, the entryman may submit final proof and complete the same, with the exception of payment of the purchase money or commissions, as the case may be; such final proof will be retained in the local office, and, should the entry be adjudged valid, will, if satisfactory, be accepted upon payment of the purchase money or commissions, and final certificate will issue without further action on the part of the entryman, except the furnishing by him, or in case of his death by his legal representatives, of nonalienation affidavit.

In such cases the party making the proof will at the time of submitting same be required to pay the fees for reducing the testimony to writing.

APPEALS TO COMMISSIONER.

RULE 47. No appeal from the action or decision of the register and receiver will be considered unless notice thereof is served and filed with the local officers in the manner and within the time specified in these rules.

RULE 48. Notice of appeal from the decision of the register and receiver shall be served and filed with such register and receiver within 30 days after receipt of notice of decision: *Provided, however,* That when motion for new trial is presented and denied, notice of such appeal shall be served within 15 days after receipt of notice of the denial of said motion.

RULE 49. No person who has failed to answer the contest affidavit, or, having answered, has failed to appear at the hearing, shall be allowed an appeal from the final action or decision of the register and receiver.

RULE 50. Such notice of appeal must be in writing, and set forth in clear, concise language the grounds of the appeal; if such appeal be taken upon the ground of insufficiency of the evidence to justify the decision, the particulars of such insufficiency must be specifically set forth in the notice, and, if error of law is urged as a ground for such appeal, the alleged error must be likewise specified.

Upon failure to serve and file notice of appeal as herein provided the case will be closed.

RULE 51. When any party fails to move for a new trial or to appeal from the decision of the register and receiver within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of—

(a) Fraud or gross irregularity.

(b) Disagreement in the decision between the register and receiver.

No case will be remanded for any defect which does not materially affect the aggrieved party.

RULE 52. All documents received by the local officers must be kept on file and the date of filing noted thereon; no papers will, under any circumstances, be removed from the files or from the custody of the register and receiver, but access to the same, under proper regulations, and so as not to interfere with transaction of public business, will be permitted to the parties or their attorneys.

COSTS AND APPORTIONMENT THEREOF.

RULE 53. A contestant claiming preference right of entry under the second section of the act of May 14, 1880 (21 Stat., 140), must

pay the costs of contest. In other cases each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses; the cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

**RULE 54.** Accumulation of excessive costs will not be permitted. When the officer before whom testimony is being taken shall rule that a course of examination is irrelevant, the same will not proceed except at the sole cost of the party insisting thereon and upon his depositing the amount reasonably sufficient to pay therefor.

**RULE 55.** Where a party contesting a claim shall by virtue of actual settlement and improvement establish his right of entry of the land in contest under the preemption, homestead, or desert-land laws by virtue of settlement and improvement without reference to the act of May 14, 1880, the costs of contest will be imposed as prescribed in the second clause of Rule 53.

**RULE 56.** The only cost of contest chargeable by registers and receivers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers, directly or indirectly.

**RULE 57.** Registers and receivers may at any time require either party to give security for costs, including expense of taking and transcribing testimony.

**RULE 58.** Upon the filing of the transcript of the testimony in the local office, any excess in the sum deposited as security for costs of transcribing testimony will be returned to the parties depositing the same.

**RULE 59.** When hearings are ordered on behalf of the Government, all costs incurred on its behalf will be paid from the proper appropriation, and when, upon the discovery of reason for suspension in the usual course of examination of entries and contest, hearings are ordered between contending parties, the costs will be paid as required by Rule 53.

**RULE 60.** The costs provided for by the preceding rules will be collected by the receiver when the parties are brought before him in obedience to the order for hearing.

**RULE 61.** The receiver will append to the report in each case a statement of costs, the amount actually paid by each of the parties, and the disposition thereof.

#### PREPARATION OF NOTICES.

**RULE 62.** All notices and other papers not required to be served by the register and receiver must be prepared and served by the respective parties.

**RULE 63.** The register and receiver will require proper provision to be made for such notices not specifically provided for in these rules as may become necessary in the usual progress of the case to final decision.

**APPEAL FROM DECISION REJECTING APPLICATION TO ENTER PUBLIC LANDS.**

**RULE 64.** To facilitate appeals from the action of local officers relative to applications to file, enter, or locate upon the public lands, the register and receiver will—

(a) Indorse upon every rejected application the date of presentation and reasons for rejection.

(b) Promptly advise the party in interest of their action and of his right of appeal.

(c) Note upon their records a memorandum of the transaction.

**RULE 65.** The party aggrieved will be allowed 30 days from receipt of notice in which to file notice of appeal in the local land office. The notice of appeal, when filed, will be forwarded to the General Land Office with full report upon the case, which should recite all the facts and proceedings had, and must embrace the following particulars:

(a) The original application, with reasons for the rejection thereof.

(b) Description of the tract involved and statement of its status, as shown by the records of the local office.

(c) Reference to all entries, filings, annotations, memorandum, and correspondence shown by the record relating to said tract and to the proceedings had.

## II.

**PROCEEDINGS BEFORE SURVEYORS GENERAL.**

**RULE 66.** The proceedings in hearings and contests before surveyors general shall, as to notices, depositions, and other matters, be governed as nearly as may be by the rules prescribed for proceedings before registers and receivers, unless otherwise provided by law.

## III.

**PROCEEDINGS BEFORE THE COMMISSIONER OF THE GENERAL LAND OFFICE  
AND SECRETARY OF THE INTERIOR.**

**EXAMINATION AND ARGUMENT.**

**RULE 67.** The commissioner will cause notice to be given to each party in interest whose address is known of any order or decision affecting the merits of the case or the regular order of proceedings therein.

**RULE 68.** No additional evidence will be admitted or considered by the commissioner unless offered under stipulation of the parties or in support of a mineral application or protest: *Provided, however,* that the commissioner may order further investigation made or evidence submitted upon particular matters to be by him specifically designated.

Affidavits or other ex parte statements filed in the office of the commissioner will not be considered in finally determining any controversy upon the merits.

**RULE 69.** After receipt of the record by the commissioner 30 days will be allowed to expire before any action is taken thereon, unless, in the judgment of the commissioner, public policy or private necessity shall require summary action, in which event he will proceed at his discretion, first notifying the attorneys of record of his intention so to do: *Provided,* That where no appeal has been filed the case may be immediately considered and disposed of.

**RULE 70.** If brief is not filed before a case is reached in its order for examination, the argument will be considered closed, and no further argument or motion of any kind will be entertained, except upon application and upon good cause appearing to the commissioner therefor.

**RULE 71.** In the discretion of the commissioner, oral argument may be presented, at a time to be fixed by him and upon notice to opposing counsel, which notice shall specify the time for such argument and the specific matter to be discussed. Except as herein provided, oral hearings or suggestions will not be allowed.

#### REHEARINGS.

**RULE 72.** No motion for rehearing of any decision rendered by the Commissioner of the General Land Office will be allowed.

#### MOTIONS.

**RULE 73.** No motion shall be entertained or considered in any case after the record has been transmitted to a reviewing officer.

In ex parte cases, where the entryman has been allowed by the commissioner to furnish additional evidence or to show cause, or, in the alternative, to appeal, both the evidence or showing and the appeal are filed, the commissioner shall pass upon the evidence or showing submitted, and, if found sufficient, note the appeal as closed. If such evidence or showing be found insufficient, the appeal will be forwarded to the Secretary as in other cases.

## APPEAL FROM THE COMMISSIONER TO THE SECRETARY.

RULE 74. Except as herein otherwise provided, an appeal may be taken to the Secretary of the Interior from the final decision of the commissioner in any proceeding relating to the disposal of the public lands and private claims.

RULE 75. No appeal shall be had from the action of the commissioner affirming the decision of the local officers in any case where the party adversely affected shall have failed to appeal from the decision of said local officers.

RULE 76. Notice of appeal from the commissioner's decision must be served upon the adverse party and filed in the office of the register and receiver or in the General Land Office within 30 days from the date of service of notice of such decision.

RULE 77. When the commissioner considers an appeal defective he will notify the party thereof; and if the defect be not cured within 15 days from the date of receipt of such notice, the appeal may be dismissed and the case closed.

RULE 78. In proceedings before the commissioner in which he shall decide that a party has no right to appeal to the Secretary, such party may apply to the Secretary for an order directing the commissioner to certify said proceedings to the Secretary and suspend action until the Secretary shall pass upon the same; such application shall be in writing, under oath, and fully and specifically set forth the grounds upon which the same is made.

RULE 79. When the commissioner shall decide against the right of appeal he will suspend action on the case for 20 days from service of notice of such decision to enable the party against whom the decision is rendered to apply to the Secretary for an order certifying the record as hereinabove provided.

RULE 80. The appellant will be allowed 20 days after service of notice of appeal within which to serve and file brief and specification of error, as provided by Rule 50, the adverse party 20 days after service of such within which to serve and file reply thereto; appellant will be allowed 10 days after service of such reply within which to serve and file response: *Provided, however,* That if either party is not represented by counsel having offices in the city of Washington, 10 days in addition to each period above specified will be allowed within which to serve and file the respective briefs.

No arguments otherwise than above provided shall be made or filed without permission of the Secretary or commissioner granted upon notice to the adverse party.

RULE 81. Examination of cases will be facilitated by filing arguments in printed form.

**ORAL ARGUMENT BEFORE THE SECRETARY.**

**RULE 82.**<sup>1</sup> Oral argument in any case pending before the Secretary of the Interior will be allowed, on motion, in the discretion of the Secretary, at a time to be fixed by him, after notice to the parties. The counsel for each party will be allowed only one-half an hour, unless an extension of time is ordered before the argument begins.

**REHEARING OF SECRETARY'S DECISION.**

**RULE 83.**<sup>2</sup> Motions for rehearing before the Secretary must be filed within 30 days after receipt of notice of the decision complained of and will act as a supersedeas of the decision until otherwise directed by the Secretary. Such motions, briefs, and arguments must not be served on the opposite party and must be filed directly with the Secretary of Interior, Washington, D. C.

Any such motion must state concisely and specifically the grounds upon which the motion for rehearing is based and be accompanied by brief and argument in support thereof.

If proper grounds are not shown the rehearing will be denied and sent to the files of the General Land Office, whereupon the commissioner will proceed to execute the decision before rendered. If upon examination grounds sufficient for rehearing are shown, a rehearing will be granted and the moving party will be notified that he will be allowed 15 days from receipt of notice within which to serve a copy of his motion, together with all argument in support thereof, on the opposite party, who will be allowed 30 days thereafter in which to file and serve answer, brief, and argument. Thereafter the cause or matter will be again considered and appropriate action taken, which may consist either in adhering to the former decision or modifying or vacating the same, or the making of any further or other order deemed warranted.

As applied to the Territory of Alaska, the periods of time granted by this rule shall be doubled.

**MOTIONS FOR REVIEW AND REREVIEW.**

**RULE 84.** Motions for review and rereview are hereby abolished.

**SUPERVISORY POWER OF SECRETARY.**

**RULE 85.** Motion for the exercise of supervisory power will be considered only when accompanied by positive showing of extraordinary emergency or exigency demanding the exercise of such authority.

In proceedings before the Secretary of the Interior the same rules shall govern, in so far as applicable, as are provided for proceedings before the Commissioner of the General Land Office.

<sup>1</sup> Amended Nov. 6, 1911.

<sup>2</sup> Amended Oct. 25, 1915.

**RULE 86.** No rule here prescribed shall be construed to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law.

#### ATTORNEYS.

**RULE 87.<sup>1</sup>** Every attorney, before practicing before the Department of the Interior and its bureaus, must comply with the requirements of the regulations prescribed by the Secretary of the Interior pursuant to section 5 of the act of July 4, 1884 (23 Stat., 101).

**RULE 88.** In all cases where any party is represented by attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any notice or other paper relating to such proceedings upon such attorney will be deemed notice to the party in interest.

Where a party is represented by more than one attorney service of notice or other papers upon one of said attorneys shall be sufficient.

**RULE 89.** No person hereafter appearing as a party or attorney in any case shall be entitled to notice of any proceeding therein who does not, at the time of appearance, file in the office in which the case is pending a statement showing his name and post-office address and the name and post-office address of the party whom he represents.

**RULE 90.** Any attorney in good standing employed, and whose appearance is regularly entered in any case pending before the department, will be allowed full opportunity to consult the records therein, together with abstracts, field notes, tract books, and correspondence which is not deemed privileged and confidential.

**RULE 91.** Verbal or other inquiries by parties or counsel directed to any employee of the department, except the commissioner, assistant commissioner, or chief of division of the General Land Office, or the Secretary and Assistant Secretary, the Solicitor, or the first assistant attorney in the offices of the Secretary of the Interior, or with the consent of one or more of said officers, is expressly forbidden.

**RULE 92.** Abuse of the privilege of examining records of the department or violation of the foregoing rule by any attorney will be treated as sufficient cause for institution of disbarment proceedings.

#### SERVICE OF NOTICES.

**RULE 94.** Fifteen days, exclusive of the day of mailing, will be allowed for the transmission of notice or other papers by mail from the General Land Office, except in case of notice to resident attorneys, in which case one day will be allowed.

In computing time for service of papers under these rules of practice the first day shall be excluded and the last day included: *Pro-*

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<sup>1</sup> Amended Apr. 9, 1915.

*vided, however,* That where the last day falls on Sunday or a legal holiday, such time shall include the next following business day.

**RULE 95.** Notice of all motions and proceedings before the commissioner or Secretary shall be served upon parties or counsel personally or by registered mail, and no motion will be entertained except on proof of service of notice thereof.

**RULE 96.** Ex parte proceedings and proceedings in which the adverse party does not appear will, as to notice of decision, time for appeal, and filing of exceptions and arguments, be governed by the rules prescribed in other cases, so far as the same are applicable. In such cases the commissioner or Secretary may, pursuant to application and upon good cause being shown therefor, permit additional evidence to be presented for the purpose of curing defects in the proofs of record.

#### INTERVENTION.

**RULE 97.** No person shall be allowed to intervene in any case except upon application therefor, under oath, showing his interest therein.

#### HOW TRANSFEREES AND INCUMBRANCERS MAY ENTITLE THEMSELVES TO NOTICE OF CONTEST OR OTHER PROCEEDINGS.

**RULE 98.**<sup>1</sup> Transferees and incumbrancers of land the title to which is claimed or is in process of acquisition under any public-land law shall, upon filing notice of the transfer or incumbrance in the district land office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting such land which is required to be given the original entryman or claimant. Every such notice of a transfer or incumbrance must be forthwith noted upon the records of the district land office and be promptly reported to the General Land Office, where like notation thereof will be made. Thereafter such transferee or incumbrancer, as well as the entryman, must be made a party defendant to any proceeding against the entry.

#### ACKNOWLEDGMENT OF THE FILING OF APPLICATIONS AND OTHER PAPERS.

**RULE 99.**<sup>2</sup> The Secretary and the Commissioner of the General Land Office will not acknowledge the receipt of papers forwarded by mail, but if a prepared receipt is forwarded to a district land office with any paper the register or receiver will sign and return the receipt to the party who forwarded the same, after inserting the date and the serial number.

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<sup>1</sup> Adopted Sept. 23, 1915.

<sup>2</sup> Adopted Nov. 10, 1915.

**EXCEPTION OF RIGHT OF WAY FOR TRANSMISSION LINES IN PATENTS.****INSTRUCTIONS.**

[No. 447]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., November 23, 1915.*

REGISTERS AND RECEIVERS,  
*United States Land Offices.*

GENTLEMEN: By decision of February 6, 1915, the Department in the case of George F. Wunsch, Helena 09158 (43 L. D., 551), held in regard to a homestead application filed for certain lands through which a strip 180 feet wide was withdrawn as a power site reserve, under the act of June 25, 1910 (36 Stat., 847), that the entry of Wunsch could be allowed but that on the entry papers and in the patent the following exception was to be placed:

Excepting and excluding from these presents all that tract of land described and included in power site reserve No. 349, created by executive order of April 22, 1913, under the act of Congress approved June 25, 1910 (36 Stat., 847).

In view of this decision, you will in the future accept all applications to enter lands *part* of which have been withdrawn for *transmission* lines, being careful to explain to the applicants that when patent issues the lands included in the transmission-line withdrawal will be excluded from the patent.

Upon accepting such applications, you will transmit them at once, by special letter and *without approval*, to this office, that the area for which deduction of fees, commissions, or purchase price (if any), is to be made, may be computed.

You will accept proper fees, commissions, or purchase money for the entire area of the subdivision sought to be entered, and deposit the same as *unearned moneys* pending notification by this office of the actual area of the entry or filing.

Upon return of the application to you, specific instructions will be given as to the actual area of the entry subject to fees, commissions, or purchase money.

You will then, in conformity with the terms of the letter returning the application, approve it, noting across the face the legend:

Excepting and excluding all that tract of land described and included in power site reserve No. — created by Executive Order dated — under act of Congress approved June 25, 1910 (36 Stat., 847), more specifically described as follows: —.

You will then apply an amount of money sufficient to cover the fees, commissions, or purchase price (if any), for the amount of

land found by this office to be subject to entry and patent, returning by the receiver's official check the surplus (if any) to the applicant, thus closing the account.

Paragraphs 7 and 81 (as amended) of Circular No. 105, May 4, 1912, should be followed, insofar as they apply.

Paragraph 81 of Circular No. 105, is hereby amended to read as follows:

(n) Moneys tendered with any application to make entry or proof where a withdrawal as a transmission line is made under the act of June 25, 1910 (36 Stat., 847), and the land withdrawn is to be excluded from the patent pending computation in the General Land Office of the area for which deduction of fees, commissions, or purchase price (if any) is to be made.

Very respectfully,

CLAY TALLMAN, *Commissioner*.

Approved November 23, 1915:

ANDRIEUS A. JONES,

*First Assistant Secretary.*

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CHRIS JUHL.

*Decided February 16, 1915.*

NATIONAL FOREST HOMESTEAD—ACT OF JUNE 11, 1906—ENLARGED HOMESTEAD.

Lands within a national forest restored to entry under the act of June 11, 1906, are subject to appropriation only under that act and can not be included in an entry under the enlarged homestead act; nor can an entry under said act of June 11, 1906, be made the basis for an additional entry under section 3 of the enlarged homestead act.

JONES, *First Assistant Secretary*:

Chris Juhl has appealed from the decision of the Commissioner of the General Land Office, dated April 18, 1914, holding for cancellation his additional entry, under section 3 of the act of February 19, 1909 (35 Stat., 639), as amended by the act of February 11, 1913 (37 Stat., 666), for lots 1, 2, and 8, Sec. 3, T. 8 N., R. 3 E., M. M., Helena, Montana, land district.

The ground of the action taken by the Commissioner was that all but one subdivision of his original entry was within the limits of the Helena National Forest, and was restored to entry under the act of June 11, 1906 (34 Stat., 233), and that lands subject to entry under said act of June 11, 1906, *supra*, may be appropriated only under that act and can not be included in an entry made under the act of February 19, 1909, *supra*. This being true, it follows that an entry made under the act of June 11, 1906, is not a proper basis for an additional entry under the enlarged homestead law.

The decision appealed from is accordingly affirmed.

**FANNIE LIPSCOMB.***Decided April 14, 1915.***SETTLEMENT—UNSURVEYED LAND—ENLARGED HOMESTEAD.**

A settler upon unsurveyed land subsequently designated under the enlarged homestead act is, upon the filing of the township plat of survey, entitled to make entry of the land embraced in his settlement claim up to the full area of 320 acres permitted by the enlarged homestead act.

**SETTLEMENT UPON SCHOOL SECTIONS AFTER SURVEY.**

No rights are acquired by settlement upon school sections subsequent to survey in the field.

**SCHOOL LANDS—IDENTIFICATION BY SURVEY—SETTLEMENT CLAIMS.**

Under the grant for school purposes made to the State of Montana by the act of February 22, 1889, the State takes no vested interest in or title to any particular tract until it is identified by survey, and where at that time covered by a valid settlement claim the grant does not attach, and the State's only recourse is to the indemnity provisions of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes.

**SCHOOL LAND INDEMNITY—ACT OF FEBRUARY 28, 1891.**

The purpose of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes, was to place all the States and Territories containing public lands, and to which grants had been made for school purposes, in a similar position, alike entitled to the benefits and subject to the conditions imposed by said act.

**JONES, *First Assistant Secretary*:**

April 25, 1907, Fannie Lipscomb made homestead settlement upon what is now the SW.  $\frac{1}{4}$ , Sec. 16, T. 32 N., R. 57 E., M. M., then unsurveyed. May 1, 1909, the land being still unsurveyed, she extended her settlement claim, under the enlarged homestead act, to include the S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  of what is now Sec. 16, Glasgow, Montana. The land was surveyed in the field between November 26 and December 3, 1908, and the plat of survey approved by the Commissioner of the General Land Office December 7, 1909. On the latter date Lipscomb made entry for the land. The Commissioner held her entry for cancellation as to the S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 16, on the ground that prior to the act of August 9, 1912 (37 Stat., 267), a settlement right to unsurveyed land could not attach to more than 160 acres, citing as authority for his action departmental decision in *Cate v. Northern Pacific Ry. Co.* (41 L. D., 316). The latter decision was overruled in the later departmental decision of *Northern Pacific Ry. Co. v. Morton* (43 L. D., 60), and for the reasons stated in that decision the Commissioner's decision in this case, in so far as it relates to the S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 16, can not be sustained under authority of the case so overruled. However, it appears that the land was surveyed in the field between November 26 and December 3, 1908, and that the enlarged homestead act was not passed until February 19, 1909, and Lipscomb did not extend her settlement claim to the S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 16, until May 1, 1909. Under the law as hereinafter set forth

settlers can not acquire rights upon school sections after survey in the field, and upon this ground the Commissioner's decision must be sustained as to said S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ .

It appears from the record that the State of Montana, on August 26, 1912, filed in the Havre local land office its indemnity school selection list 016144, tendering as basis for said selection the said SW.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 16. In his decision of January 12, 1914, the Commissioner said:

It appears to be settled that a State may not at will waive its right to school land in place and take lieu land of equal acreage . . . . . The question of the availability of certain parts of the land mentioned, as base for the selections mentioned, will hereafter be passed upon by this office.

The act of Congress of February 22, 1889 (25 Stat., 676), to enable the people of Montana, North Dakota, South Dakota, and Washington—

to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States, provided that—

Sec. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of the public domain.

Sec. 11. . . . and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

Thereafter, on February 28, 1891 (26 Stat., 796), Congress passed an act amending sections 2275 and 2276, Revised Statutes, which act is in part as follows:

Where settlements, with a view to preemption or homestead, have been, or shall hereafter be, made before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the claims of such settlers; and if such sections or either of them have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said State or Territory, in lieu of such as may be thus taken by preemption or homestead settlers.

The report of the Committee on Public Lands of the House of Representatives upon the bill last mentioned recites and adopts a report previously made to the Senate as follows:

In the administration of the law, it has been found by the Land Department that the statute does not meet a variety of conditions, whereby the States and Territories suffer loss of these sections without adequate provision for indemnity selection in lieu thereof. Special laws have been enacted in a few instances to cover in part these defects with respect to particular States or Territories, but as the school grant is intended to have equal operation and equal benefit in all the public land States and Territories, it is obvious the general law should meet the situation, and partiality or favor be thereby excluded . . . The bill as now framed will cure all inequalities in legislation; place the States and Territories in a position where the school grant can be applied to good lands, and largest measure of benefit to the school funds be thereby secured.

Considering the acts of February 22, 1889, and February 28, 1891, *supra*, the Secretary of the Interior, in instructions issued April 22, 1891 (12 L. D., 400), held that the grant of school lands to the States mentioned in the act of February 22, 1889, must be administered and adjusted under the provisions of the later general law of February 28, 1891. They have been so administered from that date to the present time and have been the subject of published decisions of this Department in the cases of *State of Washington v. Kuhn* (24 L. D., 12); *Todd v. State of Washington* (24 L. D., 106); *Noyes v. State of Montana* (29 L. D., 695); instructions of August 9, 1904 (33 L. D., 181); *Schumacher v. State of Washington* (33 L. D., 454), and *State of South Dakota v. Riley* (34 L. D., 657).

In the latter decision it was observed:

Reservations are not infrequently made of unsurveyed lands. Before survey what lands passed to the State by its grant are impossible of identification. It has always been the rule of construction of school land grants to the States that the right to any particular tract of land is not fixed until the grant is identified by the approval of the plats of survey.

. . . Congress knew of this established rule of construction, and had it intended that a different rule should apply to the grant here in question it would presumably have so declared in unequivocal terms. That the grant was not one of the specific tracts, but of quantity to be filled from certain sections, if undisposed of before survey, and was subject to amendment and change by later legislation, was early held by the Department, and that construction has been adhered to.

After citing the instructions of April 22, 1891, *supra*, and other decisions of the Department and of the courts, the Secretary concludes:

As the words "surveyed or unsurveyed" nowise enlarged the grant beyond what similar acts without them have always been held to pass, the decision is applicable to the present case, and it is held that under the grant in question the State of South Dakota takes no vested interest or title to any particular land until it is identified by survey, and that prior to such identification the grant, as to any particular tract, may be wholly defeated by settlement, the State's only remedy in such cases being under the indemnity provision of the acts of 1889 and 1891, *supra*.

In the absence of conclusive provisions to the contrary, it must be assumed that Congress did not intend to withdraw from settlement and development under the homestead laws all of the then large unsurveyed areas in the four western States named in the act of 1889; also that, as stated in the report of the Committees on Public Lands, in connection with the act of February 28, 1891, *supra*, it intended to place all of the States and Territories containing public lands and to which grants had been made for school purposes in a similar position, entitled alike to the benefits and conditions imposed by the act of February 28, 1891. The lands in the said States, unsurveyed on February 28, 1891, had not been identified, and the right or title of the States thereto had not attached under the grant of 1889.

In this situation Congress saw fit to provide that in such cases, where settlements, with a view to preemption or homestead, had been or should thereafter be made before survey of these lands in the field, the settlers should be protected and their claims allowed to be perfected under the laws applicable, the interests of the States being cared for by provision for the selection of other lands of equal acreage in lieu thereof.

As already stated, the Department has so construed and administered the acts in question since their passage. The State of Montana has acquiesced therein, and in this particular instance has already selected lands in lieu of those covered by Lipscomb's homestead claim. Furthermore, Congress has acquiesced in the construction placed upon said laws by this Department for a period of twenty-four years. In fact, the action of Congress has in this instance exceeded mere silent acquiescence, for in the case of the State of Utah, admitted into the Union under the provisions of the act of Congress of July 16, 1894 (28 Stat., 107), it provided with respect to four school sections in place in each township granted to the States, that such lands—

shall not be subject to preemption, homestead entry, or other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only.

Congress, by an act approved May 3, 1902 (32 Stat., 188), provided that—

All the provisions of an act of Congress approved February twenty-eighth, eighteen hundred and ninety-one, which provides for the selection of lands for educational purposes in lieu of those appropriated for other purposes, be, and the same are hereby, made applicable to the State of Utah, and the grant of school lands to said State, including sections two and thirty-two in each township and indemnity therefor, shall be administered and adjusted in accordance with the provisions of said act, anything in the act approved July sixteenth, eighteen hundred and ninety-four, providing for the admission of said State into the Union, to the contrary notwithstanding.

When the latter measure was pending before Congress the public lands Committee of the House and Senate, after quoting from the Utah enabling act, reported in part as follows:

Prior to February 28, 1891, the States of North and South Dakota, Montana, and Washington were admitted into the Union with provisions in enabling act similar to the provisions of section 6 of the act of July 16, 1894, just noted. On February 28, 1891, an act of Congress was passed (26 Stat., 796), which provides as follows: . . . This act was enacted to provide a uniform rule for all the States in the selection of indemnity school lands and is more liberal in its provisions to the States than section 6 of the enabling act of Utah, heretofore quoted. That section was evidently taken from the enabling act of some State admitted into the Union prior to 1891, and the comprehensive provisions of the act of February 28, 1891, were evidently overlooked in approving the Utah enabling act. The Commissioner of the General Land Office in reporting upon this matter says: "I perceive no reason why the State of Utah should not be permitted to make its selections as other States. For administrative reasons the grants to the several States should be uniformly adjusted." The bill in question will accomplish this result by making applicable to the State of Utah the provisions of the act approved February 28, 1891, above quoted.

In the act of Congress approved June 20, 1910 (36 Stat., 557), looking to the admission of the States of New Mexico and Arizona into the Union and granting lands to said States for the support of schools, Congress specifically provided that the provisions of the act of February 28, 1891, *supra*, amending sections 2275 and 2276, Revised Statutes, should be applicable to the future States.

From the foregoing it is apparent that Congress intended and has directed that the grant of school lands in place to the State of Montana and the other States named in the act of February 22, 1889, *supra*, shall be administered and adjusted as are the grants to other States, under the provisions of sections 2275 and 2276, Revised Statutes, as amended by the act of February 28, 1891, *supra*.

In the case of *Butte City Water Co. v. Baker* (196 U. S., 127), the court held:

Finally, it must be observed that this legislation was enacted by Congress more than thirty years ago. It has been acted upon as valid through all the mining regions of the country. Property rights have been built up on the faith of it. To now strike it down would unsettle countless titles and work manifold injury to the great mining interests of the Far West. While, of course, consequences may not determine a decision, yet in a doubtful case the court may well pause before thereby it unsettles interests so many and so vast—interests which have been built up on the faith not merely of Congressional action but also of judicial decisions of many state courts sustaining it, and of a frequent recognition of its validity by this court. Whatever doubts might exist if this matter was wholly *res integra*, we have no hesitation in holding that the question must be considered as settled by prior adjudications and cannot now be reopened.

See also in this connection cases of *St. Paul, Minneapolis and Manitoba Railway v. Donohue* (210 U. S., 36), *Hastings and Dakota*

*Railroad v. Whitney* (132 U. S., 366), and *Barnard v. Ashley's Heirs* (18 How., 43).

In the case of the *United States v. The Midwest Oil Company et al.*, decided by the Supreme Court February 23, 1915, the court, after citing various rulings of this Department and of the court upon the subject involved in that case, said [236 U. S., 459]:

It may be argued that while these facts and rulings prove a usage they do not establish its validity. But government is a practical affair intended for practical men. Both officers, lawmakers and citizens naturally adjust themselves to any long-continued action of the Executive Department—on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle but the basis of a wise and quieting rule that in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself—even when the validity of the practice is the subject of investigation.

This principle, recognized in every jurisdiction, was first applied by this court in the often cited case of *Stuart v. Laird*, 1 Cranch, 299, 309. There, answering the objection that the act of 1789 was unconstitutional in so far as it gave Circuit powers to Judges of the Supreme Court, it was said (1803) that, "practice and acquiescence under it for a period of several years, commencing with the organization of the judicial system, affords an irresistible answer, and has indeed fixed the construction. It is a contemporary interpretation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken or controlled."

Again, in *McPherson v. Blacker*, 146 U. S., 1 (4), where the question was as to the validity of a state law providing for the appointment of Presidential electors, it was held that, if the terms of the provision of the Constitution of the United States left the question of the power in doubt, the "contemporaneous and continuous subsequent practical construction would be treated as decisive" (36). *Fairbanks v. United States*, 181 U. S., 307; *Cooley v. Board of Wardens*, 12 How., 315.

The Department therefore adheres to its long-continued and uniform rulings to this effect, and the decision of the Commissioner of the General Land Office is modified. The homestead entry of Fannie Lipscomb will be held intact and her final proof accepted if otherwise regular as to the SW.  $\frac{1}{4}$ , Sec. 16, and the indemnity school selection filed on behalf of the State of Montana in lieu of the lands so settled upon and entered will be approved, if in other respects found to conform to the requirements of the law. As to the S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 16, the homestead entry must be canceled, for the reason hereinbefore set forth, and the State school indemnity selection in lieu thereof rejected.

## PACIFIC MIDWAY OIL CO. ET AL.

*Decided April 21, 1915.*

## PETROLEUM WITHDRAWAL—EXCEPTIONS—ACT OF JUNE 25, 1910.

The proviso to the act of June 25, 1910, saving from the force and effect of petroleum withdrawals the rights of *bona fide* occupants or claimants of oil or gas bearing lands who at that date were in the diligent prosecution of work leading to discovery of oil or gas, contemplates work of actual development with a view to discovery of oil or gas, and does not include efforts to secure capital to carry on work of development or to secure a purchaser to take over the property.

## EFFECT OF WITHDRAWAL—MINING CLAIMS.

An order of withdrawal has the same force and effect as an adverse claim asserted by any qualified person; and if a claim within a withdrawn area would have been subject to peaceable entry by an adverse claimant, because of lack of diligence on the part of the prospector, it would be defeated by the order of withdrawal.

## MINING CLAIM—APPLICATION FOR PATENT.

Where an application for patent under the mining laws is based on a certain specified location, and proceedings by the government are instituted against the same charging that some of the alleged locators are without interest, the applicant will not be heard, in the absence of publication and all other processes attendant upon an original application, to assert that in fact he bases his application on a different location of the same land.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

*Washington, April 21, 1915.*

PACIFIC MIDWAY	} The Hawk placer mineral application 012931, Los Angeles series.
OIL COMPANY ET AL.	

REGISTER AND RECEIVER,

*Los Angeles, California.*

SIRS: The land involved herein, the SW.  $\frac{1}{4}$ , Sec. 32, T. 12 N., R. 23 W., S. B. M., is situated near Maricopa in the Sunset Mining District, Kern County, California. More than a score of wells have been driven on the land from which enormous quantities of high-grade oil have been taken. It is claimed that more than \$900,000 have been expended in the development of the oil properties on the land, or in connection therewith.

This land was, on June 22, 1909, classified as oil land, and, on September 27, 1909, was included in departmental order designated as "Petroleum Withdrawal No. 3," and is within the limits of the area withdrawn by Executive order of July 2, 1910, under authority of the act of June 25, 1910 (36 Stat., 847).

April 28, 1911, the Pacific Midway Oil Company, a corporation, filed mineral application for the said tract, setting forth in support of its claim the following facts: That it, through compliance with

the mining regulations by it and its predecessors in interest, had become the owner of and was in the quiet and undisturbed possession of the Hawk mining claim, containing valuable deposits of oil and petroleum; that said claim is situated in the Sunset Mining District, County of Kern, State of California, and embraces the SW.  $\frac{1}{4}$ , Sec. 32, T. 12 N., R. 23 W., S. B. M.; that its right of possession in and to said mining claim is based on a location made by G. E. Taylor, G. F. Teilhet, E. H. White, G. W. McCutchen, M. A. Johnson, W. Kimball, A. Weaver, and C. E. White, on February 12, 1909; that said locators entered into possession of said claim and posted a notice of location thereof; that on February 13, 1909, they caused a copy of said notice to be recorded; that, thereafter, by mesne conveyance all of the respective interests of said locators in and to said location became vested in the applicant, the Pacific Midway Oil Company; and that said company, and its predecessors in interest, have been in the actual possession of the land embraced in the said Hawk placer mining claim, to wit, the SW.  $\frac{1}{4}$ , Sec. 32, etc., since February 12, 1909.

After setting forth the mineral character of the land, the applicant further alleged that in February and March, 1909, G. W. McCutchen, one of the original locators of said claim, installed a complete standard drilling outfit on the land; that, thereafter, the Obispo Oil Company, successor in interest to said McCutchen, began the actual drilling for oil with said rig; that the work of drilling was prosecuted diligently thereafter and continued by the applicant, the successor in interest to the Obispo Oil Company, until an actual discovery of oil in paying quantity was made on or about June 6, 1910; and that—

applicant seeks to take advantage of an act of Congress passed February, 1911, and entitled, "An act to protect the locators in good faith of oil and gas lands, etc.," and affiant states that the land herein applied for was not at the time of inception of development on such claim withdrawn from mineral entry and that said work of development was prosecuted from the inception of development uninterruptedly and with diligence by the locators and their successors in interest until an actual discovery of oil has been effected.

July 11, 1911, the required proof was made and July 22, 1911, the purchase money, \$400, was paid, for which the receiver issued receipt. Final certificate was, however, not issued, as a protest against the validity of the application had been filed by the Chief of Field Division.

This office, by letter "FS" of July 2, 1913, directed proceedings against the application under circular of January 19, 1911 (39 L. D., 458), charging:

1. That the location of the Hawk placer mining claim for the southwest quarter of section thirty-two, township twelve north, range twenty-three west, San B. M., Cal., by G. E. Taylor, G. F. Teilhet, E. H. White, G. W. McCutchen,

M. A. Johnson, W. Kimball, A. Weaver, C. E. White, as a purported association was in fact made by G. W. McCutchen, one of the alleged locators, for his sole use and benefit, through the use and employment, with their full knowledge and consent, of the names of his alleged co-locators, with the purpose and intent, by such device, fraud, and concealment, to secure thereby unlawfully, in fraud of the law, and direct violation of section 2331 of the Revised Statutes, a greater area of mineral ground than may be lawfully embraced in a single location by one individual.

2. That G. E. Taylor, G. F. Teilhet, E. H. White, G. W. McCutchen, M. A. Johnson, W. Kimball, A. Weaver, C. E. White, did not in good faith locate and file location notice for the above described placer claim with intent that the legal title to the land embraced in said claim should be acquired pursuant to the laws of the United States governing the location, entry or disposition of public lands valuable as placer ground, for their separate and several use and benefit but each of the above named persons made location and filed location notice pursuant to an unlawful agreement and understanding, either expressed or implied, entered into by each and every one of the above named persons whereby the said location was made and location notice filed in the interest and for the use and benefit in whole or in part, of one of said locators; to wit the said G. W. McCutchen, to secure by the aforesaid agreement and device, unlawfully, and in violation of Section 2331, United States Revised Statutes, to the said McCutchen the control and apparent possessory right to an amount of mineral land in excess of the area that may be lawfully embraced in a *single* location by one individual.

In response to the notice issued, answers were filed in your office on November 10 to 15, 1913, by the applicant, the Pacific Midway Oil Company, and also by the Maricopa Star Oil Company, the Spreckels Oil Company, John D. Spreckels, Jr., G. W. McCutchen, and the General Petroleum Company. The several answers, substantially similar, denied generally the charges preferred and set forth as matters of special defense that on January 23, 1900, G. W. McCutchen, R. L. McCutchen, J. B. McCutchen, W. C. McCutchen, C. W. Johnson, Mrs. Lena McCutchen, Mrs. M. P. McCutchen, and Mrs. M. A. Johnson made a placer association location on the said SW.  $\frac{1}{4}$ , Sec. 32, T. 12 N., R. 23 W., S. B. M., for the purpose and with the intent of thereby in good faith securing the legal title to the land located for the use and benefit of all the locators in common; that the name of the said claim was the "Lone Star" placer claim; that location notice was recorded in the office of the county recorder, etc.; that, thereafter, the seven other locators conveyed by quitclaim deed to R. L. McCutchen the said Lone Star mining claim; and that it was not intended by the said deed to relinquish to the said R. L. McCutchen the beneficial interest of the several grantors, but the conveyance was made for the purpose of convenience in managing and operating the claim for the use and benefit of said locators. The answer further set forth alleged efforts on the part of the original Lone Star locators to perpetuate their claim through various locations, including the Hawk, made in their interest.

The several defendants, above-named, together with the Obispo Oil Company, appeared at the trial of the case, participated in the hearing, and offered testimony in support of their claims. For the most part, the testimony was taken before a notary public at Bakersfield, California.

The applicant, the Pacific Midway Oil Company, at the trial of the case, through its attorney, submitted a statement in which it was admitted that six of the locators of the Hawk claim were not beneficially interested in the location, but it was contended that the said six locators "were agents or instrumentalities to carry into effect a perfectly lawful purpose."

The applicant, on June 25, 1914, filed an amended application for patent, based on the alleged Lone Star location. The attorneys representing the Government objected to the allowance of an amendment, or to an amended application—

on the ground that the case has now reached such a stage that an amendment of this kind is not proper, that the register and receiver have no jurisdiction to allow this amendment or its filing, and on the further ground that no proof has been made in fact it could not be made; that no notice of advertisement required by law on an application for patent has been made under this application and that the legal formalities and requisites that must precede a legal filing of an application for patent have not been complied with and on the general ground that it is irrelevant, incompetent, either as a pleading in the application or otherwise.

July 28, 1914, your office recommended that the charges be dismissed, that the said amended application for patent be accepted and filed, and that patent to the land be issued.

### THE FACTS:

From the year 1899 to the year 1912, the McCutchen brothers, G. W., R. L., J. B., and W. C., were engaged in the business of locating and developing oil lands in Kern county, California. During this time, numerous locations were made, and, in a great many of them, the names of the four McCutchens were used together with those of four other people. No articles of copartnership appear to have been executed until about the year 1912, but the four brothers appear to have been equally interested in most of the property located or developed. G. W. and R. L. McCutchen were the active members of the firm, or the family association, and it is probable that they were interested in some properties in which the other two brothers had no concern. Some of these locations were made in advance of any prospective purchaser, and others were made at the request of interested parties. The McCutchens would search the records, ascertain what lands were vacant, and would locate the

parties desiring to secure oil lands for \$10 a location, \$80 for a quarter-section. They would then, if so employed, perform assessment work on the claim.

#### THE LONE STAR LOCATION.

January 23, 1900, G. W. McCutchen, R. L. McCutchen, J. B. McCutchen, W. C. McCutchen, Mrs. Lena McCutchen, Mrs. M. P. McCutchen, C. W. Johnson and Mrs. M. A. Johnson located five tracts of 160 acres each, among them the Lone Star for the SW.  $\frac{1}{4}$ , Sec. 32, T. 12 N., R. 23 W., S. B. M. By deed dated December 10, 1900, and acknowledged during said month, G. W., J. B., W. C., Mrs. M. P. and Mrs. Lena McCutchen, C. W. and Mrs. M. A. Johnson, Frank Teilhet, J. R. Palmer and H. Yates conveyed to R. L. McCutchen by quitclaim deed certain pieces or parcels of land in Kern County, among them the SW.  $\frac{1}{4}$ , Sec. 32, T. 12 N., R. 23 W., located and known as the Lone Star placer claim. The Lone Star location was recorded January 24, 1900. December 26, 1901, R. L. McCutchen recorded proof of labor of not less than \$100 performed during the year 1901 upon the SW.  $\frac{1}{4}$ , Sec. 32, T. 12 N., R. 23 W., setting forth that "such expenditure was made by or at the expense of R. L. McCutchen, owner of said claim, for the purpose of holding said claim," and December 27, 1902, he filed proof of expenditure of \$100 for the improvement of said claim during the year 1902. Similar proof of the expenditure of \$100 for the improvement of the claim for the year 1905 was filed January 9, 1906.

#### THE FREEAR OR CORMORANT LOCATION.

Not having performed the assessment work during the year 1906, and believing that all rights under the Lone Star location had lapsed, R. L. McCutchen posted a notice of location on the land immediately after midnight on December 31, 1906, in the names of H. R., J. P., C. H., Bert, and Alfred Freear, brothers of his wife, J. W. Garlick, his wife's uncle, Ned Sanders, brother of J. B. McCutchen's wife, and Mrs. M. J. Dixon, mother-in-law of J. B. McCutchen. The notice described the land as the SW.  $\frac{1}{4}$ , Sec. 32, T. 11 N., R. 24 W., and referred to it as the "Cormorant" claim. On December 15, 1908, an amended notice in the names of the same parties was posted on the ground, describing the land as the SW.  $\frac{1}{4}$ , Sec. 32, T. 12 N., R. 24 W., and by deed dated December 5, 1908, and acknowledged on various dates thereafter, the last acknowledgment being taken on February 2, 1909, the said locators conveyed by quitclaim the SW.  $\frac{1}{4}$ , Sec. 32, T. 12 N., R. 23 W., known as the Cormorant placer mining claim, to G. W., R. L., J. B. and W. C. McCutchen.

During the latter part of November, 1908, the four McCutchens, doing business as "McCutchen Bros.," caused to be erected on the land a standard rig to be used in drilling for oil. The supplies furnished and the labor performed in connection with the installation of the drilling rig were paid for by checks drawn to various orders by McCutchen Bros. Some of these checks are in the hand writing of R. L. McCutchen, others in that of W. C. McCutchen, and three are signed by G. W. McCutchen. No money was paid by C. W. Johnson, Mrs. M. A. Johnson, Mrs. Lena McCutchen, or Mrs. M. P. McCutchen in connection with this work, nor did the two McCutchens whose wives appeared as locators in the Lone Star claim contribute a larger amount than the other two brothers.

When the McCutchens attempted to unload the supplies for the rig on the land, objection was made by one Francis who was claiming the land under a location made January 1, 1907. Proof of the performance of the assessment work for the year 1908 was filed by Francis on December 7, 1908. The work was done by B. M. Howe, a lessee of Francis, and, after the McCutchen brothers failed to come to terms with Francis, they entered into an agreement with Howe under which they furnished him oil to the value of \$100 in compensation for said assessment work. No further objection seems to have been urged by either Howe or Francis to the occupancy of the land by the McCutchens.

Sometime in December, 1908, C. W. Smith of Santa Maria, California, manifested an interest in the development of this property, and after consultation with G. W. McCutchen, who purported to act for the McCutchen brothers, undertook to organize a corporation to drill for oil. On January 1, 1909, the McCutchen brothers, by G. W. McCutchen, addressed a communication to Mr. Smith setting forth terms under which Mr. Smith's company could enter upon the land to drill for oil. The McCutchen brothers obligated themselves to have constructed a complete standard oil well drilling rig, and to furnish upon application one thirty or forty horse-power boiler, a fifteen horse-power drilling engine, tools, etc. The company was to enter upon the land and commence active drilling operations within thirty days, and to drill a well not less than 2,000 feet in depth unless oil was struck at a lesser depth. After completion of the well, the company was to apply for United States patent for the 160-acre tract, and after the issuance of patent the company was to deed to the McCutchens the north half of the land in question. To make it possible for the company to carry out the above conditions, the McCutchen brothers agreed to transfer to it by quitclaim deed all their rights to the land. This letter was written on a sheet of paper bearing the heading "McCutchen Bros. Oil Well Operators," and

giving the names of the firm members, G. W. McCutchen, R. L. McCutchen, W. C. McCutchen and J. B. McCutchen. After receipt of the letter of the McCutchen brothers, Smith went to San Luis Obispo and interviewed a number of people with a view to interesting them in the enterprise of boring for oil on the land, and succeeded in organizing a company, which was afterwards incorporated. February 11, 1909, Smith visited Maricopa with a view to having papers drawn up closing the contract with the McCutchens for drilling of the well, although at that time the Obispo Oil Company, the corporation then in process of formation, had not been organized. When they came to draw the contract it was discovered that the Cormorant location made by the Freears under which the McCutchen brothers then claimed did not describe the land in question. Furthermore, attention seems to have been drawn to the fact that a rival location was made during the year 1907, and one of the four McCutchen brothers was not within easy reach. It is claimed that Judge Claffin whom they consulted advised a new location; whereupon Smith stated that he could not stay around waiting for a relocation. In response to this, G. W. McCutchen said: "Why I can go right down on the street here and in a few hours see the parties and get it fixed up."

#### THE HAWK PLACER.

In making the new location for the SW.  $\frac{1}{4}$ , Sec. 32, T. 12 N., R. 23 W., S. B. M., G. W. McCutchen used the names of Geo. E. Taylor, C. F. Teilhet, E. H. White, M. A. Johnson, W. Kimball, A. Weaver, and C. E. White in addition to his own and designated the claim as the "Hawk." Notice of this location was posted on the ground February 12, 1909, and on the following morning G. W. McCutchen filed for record the notice of location of said claim together with a quitclaim deed to him from the seven other purported locators. M. A. Johnson, one of the original Lone Star locators, was not consulted as to the use of her name and no one of the other six locators expected to receive any beneficial interest in the claim or any compensation for the use of his name in connection therewith. They permitted McCutchen to use their names as an accommodation and not one of them with the possible exception of White intended to represent any or all of the original Lone Star locators. White seems to have understood that his name was to be used for the benefit of the four McCutchen brothers. No one of the original Lone Star locators authorized any one of the locators of the Hawk claim to act for him, nor did any of them empower G. W. McCutchen to secure for him an agent. G. W. McCutchen did not consult with his co-locators in the Lone Star placer, except possibly his brothers, W. C. and R. L., and the record is not clear whether they were consulted with respect to the Hawk location.

February 26, 1909, G. W. McCutchen executed a quitclaim deed conveying the SW.  $\frac{1}{4}$ , Sec. 32, T. 12 N., R. 23 W., S. B. M., to the Obispo Oil Company, and, on the same date, executed an agreement with said Company, similar in effect to the proposition made to Smith. The Obispo Oil Company on April 12, 1909, through its proper officers, executed the said agreement. Prior to the formal execution of the agreement, the Obispo Oil Company had sent its agents and employees on the ground to drill for oil. The expenses for a considerable time were borne by the McCutchen brothers, but, after the organization of the corporation, the moneys advanced by the McCutchen brothers were repaid by the Obispo Oil Company. G. W. McCutchen did not consult with Mrs. M. A. Johnson, Mrs. M. P. McCutchen, or Mrs. Lena McCutchen, before entering into the contract with the Obispo Oil Company.

On March 1, 1909, active operations were begun in the matter of drilling for oil. After a well had been driven to the depth of something less than 500 feet, it was found that they could not continue the operations, the drilling rig was moved and a new well started. This second well was driven to the depth of 470 feet, and sometime during the month of July, 1909, the Obispo Oil Company exhausted its available funds and discontinued the work. August 21, 1909, the committee appointed by the stockholders at a meeting held July 30, 1909, reported that on August 5, 1909, they had visited Maricopa and secured an agreement from the McCutchen brothers that said company might have an extension of ninety days during which to make arrangements to continue drilling operations. This authorization was signed "McCutchen Bros. By W. C. McC." The committee further reported that they had discharged the employees, shut the well down and left the properties in charge of a keeper at a salary of \$65 for the balance of the month of August. Sometime in September, a house on the land was occupied by a care-taker, who continued therein, without salary, until March 1, 1910. The Obispo Oil Company did not resume work on the claim.

During the month of January, 1910, Rinehardt T. Harding, a practicing attorney of San Francisco, California, visited Santa Maria for the purpose of securing a lease or purchase of oil lands. Upon his arrival he was informed that the land which he had intended to secure had been disposed of but that he might make a deal with the Obispo Oil Company for the land in controversy. Mr. Harding, after conferring with the officers of the Obispo Oil Company, decided to organize a company for the purpose of developing the property. He thereupon set about to organize the Pacific Midway Oil Company. The articles of incorporation of this company were filed January 29, 1910, but, prior to the organization of the company, Harding had procured an agreement with the Obispo Oil

Company whereby it conveyed the land to F. W. Nightingill. Nightingill assumed the contract of the Obispo Oil Company with McCutchen, paid the said company \$6,000, and agreed to convey to it the east forty of the south half of the land in controversy. Upon the organization of the Pacific Midway Oil Company, Nightingill assigned his contract to that company. The Pacific Midway Oil Company began operations in the latter part of February or the first part of March, 1910, when the two old wells were examined. The first was found unserviceable but it was believed that operations could be continued on the second. After experimenting several days with the second well, it was determined that it would be necessary to move the rig and begin a third. Sometime in March, 1910, work was begun on the third well under the supervision of the Pacific Midway Oil Company. The work was pushed forward and oil was discovered in paying quantities at a depth of something over 1,600 feet on June 5, 1910.

After the discovery of oil by the Pacific Midway Oil Company, G. W. McCutchen leased the W.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  to the Maricopa Queen Oil Company, and, according to the terms of the contract, eight wells were to be drilled on such twenty-acre tract by said company. Under this contract, seven producing wells were driven, and, with the consent of McCutchen, the eighth well was used for water. McCutchen received as a royalty, one-fourth of the products of the wells. The contract was made with the Maricopa Queen Oil Company in the individual name of G. W. McCutchen.

J. D. Spreckels, Jr., purchased from McCutchen the E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  and the NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , agreeing to pay him therefor, \$2,000 an acre, or \$120,000 for the sixty acres. The payment of \$60,000 was made by Spreckels on this contract but he refused to pay the remaining \$60,000 until a patent for the land was obtained. It was finally agreed that Spreckels should pay one-fifth of the product until the full amount of \$60,000 was reached, or until the land was patented, at which time he should pay any amount then found due.

Spreckels transferred the NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  to the General Petroleum Company and a number of producing wells were driven by Spreckels and the General Petroleum Company upon the lands purchased by them. Four wells were driven by the Pacific Midway Company upon the SW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  and three by the Obispo Oil Company upon the SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ .

The moneys received by McCutcheon as royalty from the Maricopa Queen Oil Company, and from Spreckels, were deposited to the individual account of G. W. McCutchen, but it appears that the Spreckels purchase money was transferred to the account of McCutchen Bros. Upon the receipt of these moneys, G. W. McCutchen would divide them into four portions and would draw checks in favor of his

brothers, R. L., J. B., and W. C. in equal amounts, retaining a like portion in his own account. There were introduced in evidence by the defendants a large number of checks drawn by McCutchen in favor of his three brothers. In most instances the portions received by the several brothers were the same and where there was a discrepancy in the amount it is explained that some charge or credit was included. One check of \$22, dated April 9, 1912, was drawn in favor of C. W. Johnson. The following checks were drawn in favor of Mrs. M. A. Johnson: February 6, 1914, \$75; March 14, 1914, \$75; May 23, 1914, \$75; April 28, 1913, \$120; and May 27, 1913, \$693. The check last named appears to have been paid but it was not endorsed by Mrs. Johnson. May 24, 1913, checks of \$1,500 each, signed "McCutchen Bros., By G. W. Mc.," were drawn in favor of Geo. B. Landers and H. C. Mosher, and, on the same date, checks of \$13,000 each, signed McCutchen Bros., by G. W. Mc., were drawn in favor of R. L. McCutchen, J. B. McCutchen, and W. C. McCutchen. The checks last-mentioned were, as between the McCutchen brothers, a division of the proceeds received from the sale of the land to Spreckels, and those in favor of the other two parties mentioned were for expenses in connection with such sale. No checks were drawn in favor of Mrs. Lena McCutchen or Mrs. M. P. McCutchen and no money was paid to either of them individually. G. W. McCutchen received the following amounts: Maricopa Queen Oil Company, royalties, \$67,100.45; J. D. Spreckels, Jr., purchase money and royalties, \$77,626.69; General Petroleum Company, \$4,828.82; and Maricopa Star Oil Company, \$26,224.70; a total of \$175,780.66. This amount had been divided into equal portions between the four McCutchen brothers, after deducting the expenses incident to the several transactions. G. W. McCutchen did not keep any books, but it was his custom to immediately distribute to his several brothers their respective portions upon receipt of the amounts by him. These payments were made by checks and the respective items were noted on the check stubs.

#### THE MUD HEN LOCATION.

June 27, 1910, a notice of location of the "Mud Hen" placer claim was posted on the land, setting forth that on that day R. L., L., W. C., L. E., J. B., M. P., M. E., and P. S. McCutchen had discovered a valuable deposit of petroleum within the limits of the SW.  $\frac{1}{4}$ , Sec. 32, T. 12 N., R. 23 W. Notice of this location was filed for record June 29, 1910, at the request of R. L. McCutchen. This location was made upon the advice of R. L. Harding, attorney for the defendant, the Pacific Midway Oil Company. R. L., L., W. C., J. B., and M. P. McCutchen were locators of the Lone Star claim. Mr. Harding advised G. W. McCutchen to relocate the claim after the discovery of

oil and to use the names of the McCutchens in such relocation. P. S. McCutchen was the father of the four McCutchen brothers and Mrs. M. A. Johnson; M. E. McCutchen, the wife of G. W. McCutchen; and L. C. McCutchen, the wife of W. C. McCutchen.

#### TESTIMONY OF THE EIGHT LONE STAR LOCATORS.

All the locators of the Lone Star claim were called as witnesses at the trial of the case and each testified that he claimed an interest in the land based upon the original Lone Star location, and that the deed executed in the year 1900, conveying the land to R. L. McCutchen, was not intended as a conveyance or surrender of the several interests of the other seven locators but was made for the purpose of convenience in handling the property. Two statements signed by Mrs. M. A. Johnson, procured through special agents of the General Land Office, were introduced in evidence. In one of these statements dated April 30, 1912, she stated:

I have no present interest in the aforesaid placer mining claim having conveyed same to my brother G. W. McCutchen for \$500 cash. I can not state just what expense I was out on this claim, my husband had horses and wagons which were used in the development of the land, just how much we were out I can not say. I do not know the present condition of this claim but I know it is considered a very valuable piece of oil land.

In the other statement dated March 19, 1914, and signed jointly with her husband, C. W. Johnson, in the presence of her brother, R. L. McCutchen, it is said:

That C. W. Johnson has had no interest in the said SW.  $\frac{1}{4}$ , Sec. 32, but that his wife, M. A. Johnson, a sister of R. L. McCutchen, has been and still is interested in the said SW.  $\frac{1}{4}$ , Sec. 32. That M. A. Johnson was never called upon to pay anything personally in connection with said SW.  $\frac{1}{4}$  Sec. 32 but that her share of the expenses was deducted from the proceeds of profits she received from said SW.  $\frac{1}{4}$ , Sec. 32. M. A. Johnson has received several hundred dollars.

This statement is preceded by a declaration that C. W. and M. A. Johnson had heard read a statement made by R. L. McCutchen and that said statement is true and correct. R. L. McCutchen in the statement above referred to used this language, referring to settlements made by his brother, G. W. McCutchen:

He settled with me, with W. C. and his wife, with J. B. and his wife, and with Mrs. M. A. Johnson. Mr. C. W. Johnson doesn't get any of the proceeds or profits from the said SW.  $\frac{1}{4}$ , Sec. 32, but his wife gets a share of the profits. My share and my wife's, Mrs. L. McCutchen, comes to me jointly. The interest of J. B., W. C. and G. W. McCutchen is identical with mine and we share equally in the proceeds.

Mrs. Johnson testified that during the past five years she had received several thousand dollars from her four brothers, . . . "first one of my brothers and then the other; not anyone in particular;"

that the last money she received was from her brother George about ten days before testifying; that previously she had received money from "Robert, J. B. and W. C. at different times;" and that she did not know how much money she had received at different times from her brothers. She stated she considered that all her four brothers owed her money and placed the amount between \$20,000 and \$30,000.

C. W. Johnson testified that he was not consulted about the lease of the property or its disposition. He said, "There was no reason why I should be consulted. I turned everything over to Bob and he was to do the best he could and I was not worrying about him at all." Mr. Johnson testified that in November, 1908, he began working for the Union Oil Company as superintendent of the warehouse, manager of the supplies, etc.; that he worked for said company at a salary of \$90 a month until April 15, 1910, at which time he severed his relations with the company; that upon leaving the company he was presented with a watch by his fellow employees as a token of esteem (this watch was exhibited at the trial); that from his employment with the Union Oil Company he went to the Phoenix Refining Company in the capacity of superintendent at a salary of \$150 a month; that he continued at such salary with the company last mentioned until the month of April, 1913, when he was stricken with paralysis, since which time he had not been able to leave the house; that when he suffered the stroke the physician advised him to make arrangements necessary to protect his family, and, believing that he was about to die, he executed two deeds conveying certain real estate to his wife; that he did not transfer to his wife his interest in the SW.  $\frac{1}{4}$ , Sec. 32, but states he said to her, "you take care of this equity of mine in 32;" that he had spent no money whatever for the development work on the SW.  $\frac{1}{4}$  32-12-23; that no one of the McCutchen brothers owed him any money; that he had received nothing from any one of those interested in this property but that his wife had; that he estimated the amount of money she had received at probably \$5,000 or \$6,000; that he did not remember the first money she received from the land; that he could not tell whether it was before or after he was taken sick; that R. L. McCutchen owned the property on which he was at that time living; and that he still owned an equity in the land "if I haven't turned it over to my wife."

J. B. McCutchen testified that his brother Geo. W. had received about \$160,000 from the proceeds of the land and that the latter had paid him, by checks, at various times, the total sum of \$37,887.15. Questioned as to the source from which the money came, he referred to the sale to Spreckels.

Q. Who, if you know, conducted that transaction?—A. G. W.

Q. Whom do you mean by "G. W."?—A. McCutchen Brothers and G. W. done the business.

He was asked by the attorney for the defendant with respect to the money that had been paid to him:

Q. Now, did you receive that for your own individual interest or for that of anyone else?—A. Well, that is what I would call my one-fourth interest, mine and my wife's together.

W. C. McCutchen testified that he had received \$38,000 or \$39,000 from the sale of the lands and the proceeds of oil. He also testified that there was an arrangement between the brothers that he and G. W. McCutchen were to provide for the proportion of the royalties, or the profits of the land, to the Johnsons. He did not know how much the Johnsons had been paid but placed the amount at "probably two or three thousand dollars."

Q. What are you to do in regard to that matter?—A. Well, we are to take care of the Johnsons.

Q. Why was such an arrangement made?—A. Well, we were better able to do it than Bob and Jim, the other two brothers; we hadn't so heavy a load to carry.

Cross-examined by Government counsel concerning this statement, he said:

Q. Mr. Harding asked you about some arrangement whereby you and George were to take care of the Johnsons, and he asked you why that was, and I understood you to testify that it was because you were better able than your brothers, J. B. or R. L.?—A. Yes.

Q. You didn't have the load to carry that they had. What did you mean by that?—A. Well, we didn't have as big families to look after.

Q. Better able to stand the expense than R. L. or J. B.?—A. Yes.

The following questions were asked of and answered by this witness:

Q. Do you claim any interest in the property under this Mud Hen location notice?—A. Yes.

Q. What interest do you claim under that?—A. The same interest I claim under the Lone Star location.

Q. What interest is that?—A. One-fourth interest.

In connection with his testimony that he had received \$38,000 or \$39,000 from the sale of the land and the proceeds of oil, he was asked by counsel for the applicant: "Was that sum received by you purely for your own interest in the land or for that of anyone else?" To this, he answered: "For my own interest."

George W. McCutchen testified that his brother, W. C. and himself were to take care of the Johnsons and their interest out of their one-half and that R. L. and J. B. McCutchen were relieved from any obligation; that the checks given to R. L. McCutchen were for a community interest of R. L. McCutchen and his wife Lena McCutchen and those given to J. B. McCutchen for the interest of J. B. McCutchen and his wife M. P. McCutchen; that he had paid perhaps

a couple of thousand dollars to the Johnsons; that the reason why they were not paid more was that the money given them "was sufficient for their needs;" that the reason why more money was not paid them was that Mr. Johnson was a hail fellow well met, and, while not a drunkard, "got a little happy once in a while;" that he would spend his last cent for liquor, etc.; that he could not take care of his family and "we," referring to the McCutchen brothers, "generally help him;" that for a period of twenty years he and his brothers had contributed to the support of the Johnsons; that Mr. Johnson then had an existing interest with the other seven Lone Star locators; that the check for \$22 was the only one he had ever given to Mr. Johnson for his share in the property but that he had paid him more money in coin, he did not know how much; that he did not take any receipt for moneys paid to Mr. Johnson nor keep any account of such payments; that he had paid Mrs. Johnson money other than the checks produced; that such payments were made in coin and he did not know how much he had given her; that he did not take any receipt and did not keep any books; that he had made payments to Mrs. Johnson for both her and her husband's share of the property; that according to his estimate he owed Mrs. Johnson \$1,000 but not as much as \$2,000; and that the Hawk location was "for the purpose of acquiring title for the eight original locators to the southwest quarter of section 32-12-23 known as the Lone Star location, located in 1900."

R. L. McCutchen testified that the Freear or Cormorant locations were made for the benefit of the original Lone Star locators and that the deed executed by the Freears, etc., conveying the land to G. W. McCutchen, W. C. McCutchen, R. L. McCutchen and J. B. McCutchen was "for the purpose of getting it back to the original locators who had always claimed it."

With the exception of the discovery of oil in such quantities as to impress the land with mineral character, about which there was no controversy, there is scarcely a material representation made in the sworn statement upon which the patent application was based that was not proven erroneous or untrue by the testimony adduced by the applicant at the trial. Instead of a location made on February 12, 1909, by G. E. Taylor, G. F. Teilhet, E. H. White, G. W. McCutchen, M. A. Johnson, W. Kimball, A. Weaver and C. E. White, and for their benefit, as set forth in said application, it is now claimed that the applicant's right to a patent is based on a location made January 23, 1900, by G. W. McCutchen, R. L. McCutchen, J. B. McCutchen, W. C. McCutchen, C. W. Johnson, Mrs. Lena McCutchen, Mrs. M. P. McCutchen and Mrs. M. A. Johnson; and the applicant admits that, with the exception of G. W. McCutchen and Mrs. M. A. Johnson, not one of the locators upon

which it based its original claim to patent had or ever claimed any beneficial interest in and to the land. While it was set forth in said application for patent that in February and March, 1909, G. W. McCutchen caused to be duly installed upon the land a complete drilling outfit, etc., and that immediately thereafter the Obispo Oil Company, successor in interest to said McCutchen, began the actual drilling for oil, it is established by the testimony of the applicant that the McCutchen brothers, G. W., R. L., W. C., and J. B. placed the drilling outfit on the land in the month of November, 1908; and, instead of the showing made in the application for patent that the work of drilling for oil was prosecuted diligently after the erection of the rig on the land in February and March, 1909, until a discovery of oil was made, it is shown by the testimony that the Obispo Oil Company, on August 5, 1909, after failing in two attempts to discover oil by drilling, paid off its employees and shut down operations, that from August 5, 1909, until about March 1, 1910, nothing whatever was done on the land looking to a discovery of oil, and that, after some effort to continue drilling in the last well started by the Obispo Oil Company, the applicant about March 1, 1910, started a new well by which the discovery of oil was made. It will be observed that when the land was, on September 27, 1909, included in petroleum reserve No. 2, the Obispo Oil Company was not actively or diligently in the prosecution of work on the land; nor was anything done until about five months thereafter, when the applicant herein, having purchased the land from the Obispo Oil Company before the discovery of oil, and six months after the said Obispo Oil Company had ceased operations, took possession of the land and after some effort to utilize the work theretofore begun by the Obispo Oil Company selected a different location and proceeded anew to drill for oil. Therefore, the statement in the application "that said work of development was prosecuted from the inception of development uninterruptedly and with diligence by the locators and their successors in interest until an actual discovery of oil has been effected," is disproven, in that there was a period of more than six months after the Obispo Oil Company ceased its operations, and during which time the withdrawal order intervened, before work was begun by the applicant. The discovery of oil was made in a well begun by Pacific Midway Oil Company about March 1, 1910, long after the withdrawal order of September 27, 1909.

The Government has not sought to deny this patent upon the ground that the claim was transferred before an actual discovery of oil, and, therefore, the act of March 2, 1911 (36 Stat., 1095), has no application. Furthermore, if it were necessary to invoke the provisions of such statute in the matter of the transfer of the inter-

est of the locators before discovery, it would have no application here for the reason that the applicant acquired no interest prior to February, 1910, almost six months after its predecessors in interest had ceased operations on the land, and when the applicant began work the lands were embraced in the withdrawal order of September 27, 1909; nor does this case fall within the proviso to the act of June 25, 1910 (36 Stat., 847), as amended by the act of August 24, 1912 (37 Stat., 497), that—

the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a *bona fide* occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work.

While an effort had been made by the Obispo Oil Company to discover oil prior to the issuance of the withdrawal order of September 27, 1909, the work had been discontinued long prior to such date.

The contention that the withdrawal order of September 27, 1909, was unauthorized and that it is without legal effect is set at rest by the decision of the Supreme Court sustaining said order, handed down February 23, 1913, in the case of *United States v. Midwest Oil Company et al.* The applicant herein does not claim that it acquired any interest in the land prior to the withdrawal order of September 27, 1909, and, as the legality of that order has been fully sustained by the Supreme Court in the decision above cited, the application must be denied, unless on that date its predecessors in interest were in *bona fide* occupancy of the land in diligent prosecution of work leading to discovery, and unless they and the applicant after it acquired its alleged interest continued in diligent prosecution of said work until the discovery of oil. For a period of almost six months prior to the time that the applicant acquired its alleged interest in the land, no work whatever was done by its predecessors in interest leading to a discovery of oil on the land, and during that period of inaction the withdrawal order intervened. The applicant, therefore, took nothing by its alleged purchase, because its assignors had nothing to convey. There had been no discovery of oil, and prior to the discovery the only right that could have been acquired by a prospector was the right to continue in possession of the land as long as he diligently prosecuted the labor looking to such discovery.

The Supreme Court of California in the case of *McLemore v. Express Oil Company* (158 Cal., 559) considered at length the rights of a prospector who goes upon the public land and engages in work leading to a discovery of oil. It held that no right is acquired by such prospector that the Congress is obliged to recognize prior to discovery. It refers to the fact that the laws touching

assessment work are not applicable in the absence of a discovery, or, in other words, until the location is valid and complete. The court said:

But where the location is incomplete, no question of assessment work is involved. What the attempting locator has is the right to continue in possession, undisturbed by any form of hostile or clandestine entry, while he is diligently prosecuting his work to a discovery. This diligent prosecution of the work of discovery does not mean the doing of assessment work. It does not mean the pursuit of capital to prosecute the work. It does not mean any attempted holding, by cabin, lumber pile or unused derrick. It means the diligent, continuous prosecution of the work, with the expenditure of whatever money may be necessary to the end in view. Of such work, defendant's grantors were not in the prosecution up to April 12, 1907. They were not only not in the actual possession of the land, as the court finds, but the evidence discloses that what they had done was no more than to attempt to hold the land, under the theory that assessment work was adequate for that purpose. It is shown by the evidence that they were not only not engaged in the diligent prosecution of the work, but that they were not financially able so to prosecute it, and were either in search of capital to enable them to do so, or in search of a purchaser to buy out such interest as it might be thought that they had.

The same court in the case of *Borgwardt v. McKittrick Oil Company* (164 Cal., 650), said:

The rights of the person or persons endeavoring to locate an oil claim, after the posting of notice, etc., are well settled by the decisions. Until the inchoate location is perfected by discovery, the locator has no vested right which Congress is obliged to recognize. But where his location is made in good faith, he has the right, as against third persons, which is transferable, "to be protected against all forms of forcible, fraudulent, surreptitious, or clandestine entries and intrusions, upon his possession," so long as he "remains in possession and with due diligence prosecutes his work toward a discovery." (*Miller v. Chrisman*, 140 Cal. 440, 447; 98 Am. St. Rep. 63, 73 Pac. 1084; *Weed v. Snook*, 144 Cal. 439; 77 Pac. 1023.) As long as such a condition continues, no one without his consent can make the actual entry of the land essential to legally initiate a new location. But actual possession of the land coupled with continued diligent prosecution of discovery work are essential to his protection. "What the attempting locator has is the right to *continue* in possession, undisturbed by any form of hostile or clandestine entry, while he is diligently prosecuting his work to a discovery . . ."

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Clearly, the mere "figuring" with other persons by the locator as to what they will charge for the doing of such work, or the making of an effort to find some one who will do such work at a price satisfactory to the attempting locator, which is the utmost plaintiffs' evidence tends to show was done, cannot be held to constitute a diligent prosecution of the work of discovery, any more than the pursuit of capital to prosecute such work can be held to constitute such diligent prosecution.

The predecessors in interest of the applicant were prospectors merely, and, prior to the withdrawal, they had not acquired any right which the Government was obliged to recognize, and the proviso to the act of June 25, 1910. (36 Stat., 847), protected only the

*bona fide* occupant or claimant who, at the date of the order of withdrawal, was in diligent prosecution of work leading to a discovery of oil and who continued in diligent prosecution of said work. The withdrawal order must be given the same force and effect as an adverse claim asserted by any qualified person, and if tested by the rule announced in the courts, the claim would have been subject to a peaceful entry by an adverse claimant, because of a lack of diligence on the part of the prospector, it was defeated by the withdrawal order. The proviso says "prosecution of work." This can not mean endeavoring to secure capital to continue the work or to secure a purchaser to take over the property. The work intended by the proviso is the work of actual development.

The Supreme Court of Nevada, in the case of *The Ophir Silver Mining Company v. Carpenter* (4 Nev., 534), after defining diligence as the "steady application to business of any kind, constant effort to accomplish any undertaking," added:

It is the doing of an act, or series of acts, with all practical expedition, with no delay, except such as may be incident to the work itself.

In the same case, referring to the contention that illness and lack of means should be taken into consideration in determining the matter of diligence, the court said:

But we are inclined to believe that his illness is not a circumstance which can be taken into consideration at all. Like the pecuniary condition of a person, it is not one of those matters incident to the enterprise, but rather to the person. The only matters in cases of this kind which can be taken into consideration are such as would affect any person who might be engaged in the same undertaking, such as the state of the weather, the difficulty of obtaining laborers, or something of that character.

No reason is assigned why, after August 5, 1909, the Obispo Oil Company did not continue to actively prosecute the development work on the claim, except its lack of means. It contented itself, after encountering financial difficulties, with securing permission from the McCutchens to delay operations for a period of ninety days, but it did not even resume operations at the expiration of that time. It must be and is therefore held that this case does not fall within the protection accorded by the proviso to the aforesaid act of June 25, 1910, as amended.

The material facts with reference to the several so-called locations have been fully set forth but a review thereof and the expression of any conclusion therefrom are deemed unnecessary, as the original and amended applications must be rejected for the reasons above stated. But it must not be inferred that the procedure adopted by the applicant in this case is approved or condoned. Under the solemn sanction of the oath of its agent, it set forth in its original application that its right was based on the so-called Hawk location

made by eight named persons, and after the Government had begun proceedings charging that seven of these alleged locators were without interest, it answered that its right was, in truth, based on a location made in 1900, by persons with whom it did not connect in the abstract of title presented in support of its original application, and, at the hearing, it admitted that six of the persons named as the locators upon which its claim for patent was based were without interest, "mere instrumentalities," and, after the Government had proven beyond dispute at the trial of the case that six, if not seven, of the so-called Hawk locators were not beneficially interested, it came forward with an amended application basing its right to patent on the alleged location made in 1900 by persons whose names it did not disclose in its original application. In law the applicant was without right to submit and have considered, in the absence of publication and all the other processes attendant upon an original application, this so-called amended application, and, as a matter of good administrative practice, such amended application would be rejected for the reasons above given, if it were necessary to pass upon the question of its regularity.

The decision of your office of July 28, 1914, is, therefore, reversed, and the original and amended applications rejected.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

April 21, 1915.

This cause having been jointly heard before the Commissioner of the General Land Office and the First Assistant Secretary at the request of counsel for applicant, to the end that a final decision might be rendered without resort to the ordinary formal procedure, the foregoing decision of the Commissioner, is hereby approved and adopted.

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

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PACIFIC MIDWAY OIL CO. ET AL.

Motion for rehearing of departmental decision of April 21, 1915, 44 L. D., 420, denied by First Assistant Secretary Jones, August 27, 1915.

## ROBERT L. MORRIS.

*Decided May 29, 1915.*

## NATIONAL FOREST WITHDRAWAL—SETTLEMENT.

Where one claiming to have been a settler upon lands included within a forest withdrawal was at the date of such withdrawal the proprietor of more than 160 acres of land, and therefore not qualified to make a homestead settlement, he had no such settlement right at that date as would except the land from the force and effect of the withdrawal; and by subsequently reducing his holdings to less than 160 acres, and attempting to comply with the law as to residence upon the land claimed by him, he can not acquire any rights as against the withdrawal.

*SWEENEY, Assistant Secretary:*

The Department, on June 24, 1914, rendered decision on motion for rehearing, vacating its decision of March 21, 1914 (not reported), and directing that a further hearing be ordered in this case, relative to the settlement claim of Robert L. Morris to the SE.  $\frac{1}{4}$ , Sec. 2, T. 32 S., R 12 W., W. M., Roseburg, Oregon, land district, and particularly as to his qualifications under the homestead law.

These lands were withdrawn for forest purposes April 29, 1903, and were included in Siskiyou National Forest by proclamation of October 5, 1906. Township plat of survey was filed December 13, 1912. On October 21, 1911, proceedings were directed against the claim of Morris that he had settled on said lands during April, 1902, charging that Morris had not established nor maintained residence upon nor cultivated said lands, and did not settle thereon in good faith prior to the withdrawal for forest purposes. Upon hearing being had, the Commissioner found and held that Morris did not have at the date of the forest withdrawal such a claim as to defeat the same. In the Department's decision of March 21, 1914, it was held, without passing upon the question of settlement, that Morris, by his own admission, was shown to have been disqualified for some time prior to said hearing, by reason of being the proprietor of more than 160 acres of land. Further hearing was directed, however, by said decision of June 24, 1914, in view of the indefinite showing as to the ownership by Morris of certain lands.

Said further hearing has been had and the entire record has been carefully reviewed and considered by the Department. It is shown by the testimony that this claimant is one of six heirs of his father, Charles Morris, who died April 3, 1903, intestate, leaving approximately 160 acres of land, subject to the dower interest of his widow, who died in 1907, without dower having been assigned to her, though she appears to have continued living upon said lands with some of the heirs. This claimant was entitled to a one-sixth interest in his father's estate. No administration of said estate appears to have

been had, he and his brothers paying the debts of the estate, amounting to \$1,000, without administration. He and two of his brothers appear to have been engaged in the timber business and to have acquired in their joint interest 160 acres of land on September 2, 1902, by purchase from a party who held a tax deed for that land; and in February, 1905, approximately 226 acres of other lands, by purchase from other parties; also, in October, 1905, approximately 22 acres from another party. At the date of said forest withdrawal, October 5, 1906, this claimant, therefore, had a one-third interest in 408.65 acres, or 136.22 acres, besides a one-sixth interest in his father's estate, amounting to 26.70 acres, or a total landed interest at that time of 162.92 acres.

In addition to the foregoing interests of the claimant, there was placed in escrow September 27, 1906, a deed to him and one brother of other lands, amounting to approximately 100 acres, which was not delivered to them under the escrow until January, 1913. In May, 1909, he sold approximately 77 acres, and in that and the three following years inherited or purchased other lands, amounting in the aggregate to approximately 67 acres, and sold approximately 53 acres more.

The claimant had, by virtue of his tax deed title, such proprietorship of the lands embraced in the tax deed referred to as is contemplated by the homestead law. (*Leath v. Pope*, 41 L. D., 387.)

In the State of Oregon, where these lands are located, an unasigned dower interest is not a legal estate in the lands to which such interest relates, and the nature of the widow's dower interest is not affected by the fact of her occupation of the lands without assignment of dower under that provision of the statute of the State (Sec. 7297 Lord's Oregon Laws), allowing a widow so to occupy the lands in which she has a dower interest, so long as the heirs, or others interested, do not object. (*Neal v. Davis*, 99 Pac., 69.)

The Department has also held that one having a mere life estate in land is not the proprietor thereof within the meaning of the statute declaring disqualified to make homestead entry one who is the proprietor of more than 160 acres of land (*Siestreem v. Korn*, 43 L. D., 200).

It is apparent from the foregoing that this claimant was the proprietor, within the meaning of the law, of 162.92 acres of land, at the date of said forest withdrawal, October 5, 1906, and was, therefore, disqualified from making homestead entry, without considering the status of his interest under said deed placed in escrow September 27, 1906, which, under the general principles of law, would not be effective to pass the title until delivery out of the escrow. Under these circumstances, said forest withdrawal attached to these lands, notwithstanding this claimant may have settled and

resided upon said lands prior thereto, and said withdrawal having attached, any subsequent residence or attempted compliance with law by him on said lands was ineffectual to confer on him any rights in the premises; nor could his subsequent ownership of less than 160 acres of land operate to invest him with any rights as against such withdrawal.

The decision appealed from, as herein modified, is affirmed.

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**ROBERT L. MORRIS.**

Motion for rehearing of departmental decision of May 29, 1915, 44 L. D., 439, denied by First Assistant Secretary Jones November 11, 1915.

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**INSTRUCTIONS.**

*June 29, 1915.*

**RESERVATION OF TIDE LANDS IN ALASKA FOR THE USE OF NATIVES.**

Neither the fifth proviso to section 10 of the act of May 14, 1898, nor the act of June 25, 1910, authorizes the reservation of tide lands in Alaska for the use of natives for landing places for canoes and other water craft.

**RIPARIAN RIGHTS ON NAVIGABLE WATERS IN ALASKA.**

A grant of lands bordering on or bounded by navigable waters in Alaska conveys to the grantee free and unobstructed access to such waters.

**ROADWAYS ON TIDE LANDS IN ALASKA.**

A roadway built without authority across tide lands in Alaska, for the use and benefit of the public, may be permitted by sufferance to remain, so long as it is not detrimental to public rights and does not constitute an interference with navigation.

**RIPARIAN RIGHTS OF NATIVES ON NAVIGABLE WATERS IN ALASKA.**

The rights of natives in Alaska to the use and occupancy of tide lands is not different from the rights of the public or of other riparian owners; and where such natives have placed structures upon tide lands they may be permitted to remain, by sufferance or implied license only, so long as they do not interfere with the right of public navigation and are not nuisances.

*Commissioner Tallman, approved by First Assistant Secretary Jones, to the Commissioner of Education.*

This office is in receipt of your [Commissioner of Education] letter of October 2, 1914, with which you submitted five inclosures, one of which was a letter from District Superintendent of Schools, W. G. Beattie, dated at Juneau, Alaska, September 7, 1914, containing certain recommendations relative to the use of the tide lands in front of the Auk Indian village. Referring to Mr. Beattie's recommendations, you stated that you desire this office to advise you (1) whether

or not it is feasible to reserve, for a landing place for the water craft of the natives of Juneau, the tract described by Mr. Beattie; (2) whether or not Mr. A. A. Gabbs, who appears to own a forty-three foot frontage in the native village, can control the tide land in front of said frontage; (3) whether or not the road which has been built across the tide flats by the town of Juneau can, by sufferance, be permitted to remain; and (4) whether or not the natives of the Juneau Indian village can be permitted to occupy that part of the tide flats lying between the line of high tide and the road that has been built across the flats by the town of Juneau.

Mr. Beattie in his letter of September 7, 1914, addressed to the Secretary of the Interior, referred to the fact that Special Agent W. J. Lewis of this office had made an investigation relative to the tide land conditions at Juneau, Alaska. This office is in receipt of a report from Special Agent Lewis, dated at Juneau, Alaska, May 29, 1914, in which he recommended that a certain portion of the tide flats at Juneau be reserved as a landing place for the native Indians. Special Agent Lewis also submitted another report under date of May 26, 1914, in which he set forth the facts relative to the building conditions along the water front at Juneau and the encroachments by certain persons by the placing of piling and other structures upon the tide flats. On July 15, 1914, Chief of Alaskan Field Division, A. Christensen, of this office, transmitted a copy of a resolution signed by the President of the Council and ex-officio Mayor of Juneau, under date of June 19, 1914, setting forth the necessity for the construction of a roadway over the tide flats and in front of the Juneau water front, and requesting the Department of the Interior to permit the city to construct the same. A letter from the Governor of Alaska, addressed to the Secretary of the Interior under date of July 9, 1914, also accompanied the resolution. In the latter letter it was stated that after careful investigation of the statements contained in the above referred to resolution, the writer desired to recommend that permission to construct the roadway be granted, with the clear understanding that due and ample provision should be made reserving for the Indians ingress and egress for their fishing boats and canoes.

Among the inclosures submitted with your letter of October 2, 1914, *supra*, was a copy of a telegram from the Governor of Alaska, dated August 21, 1914, in which he stated that the above referred to roadway over the tide flats had been completed and in which he recommended that Mr. Beattie be designated to look after the rights of the natives, and a copy of a telegram addressed to Mr. Beattie at Juneau, Alaska, by the Assistant Secretary of the Interior, under date of August 24, 1914, designating Mr. Beattie to look after the rights of the natives in the matter of the tide lands controversy and

directing him to consult with the Governor of Alaska and the District Attorney.

In view of the importance of this matter in relation to equities which may require consideration in the future, this office has given careful consideration to the propositions contained in the questions which you desire this office to answer as set forth in your above referred to letter.

The shore or the foreshore as described in the common law of England, is that ground which is between the ordinary high water mark and low water mark. In England the question of title to this area bordering upon the sea and upon rivers where the tide ebbs and flows, caused much controversy and was for a long period of time not legally settled. Under the early English common law the judges were inclined to hold that the title of riparian owners extended to low water mark. That holding was, however, gradually overruled until finally under the later English common law the judges established the doctrine that the title to the foreshore was vested in the Crown, subject to certain public rights, unless the riparian owners could produce evidence to show that it had been acquired by them under some grant expressed or implied. See Farnham on Waters and Water Rights, Volume 1, Chapter 4. The common law of England upon this subject which was adhered to at the time that the English Colonies in America were established, was adopted and at that time the later doctrine had prevailed. The common law of England, therefore, has since been adhered to except in so far as it has been modified by the charters, constitutions, statutes, or usages of the several Colonies and States, or by the constitution and laws of the United States. See *Shively v. Bowlby*, 152 U. S., 1. It has become the settled rule of law as laid down by the United States Supreme Court that upon the acquisition of territory the United States acquires title to the tide lands equally with the title to the upland, but that with respect to the former the government holds it only in trust for the future States that might be erected out of such territory. See *Knight v. United States Land Association*, 142 U. S., 183. Having once rightfully acquired territory the United States under the constitution is the only government which can impose laws upon such territory, and it, therefore, has entire dominion and sovereignty, national and municipal, federal and state, over such territory, so long as it remains in a territorial condition. *American Insurance Company v. Canter*, 1 Peters, 511, 542. In this respect, however, the United States, as has been said above, merely holds the tide lands or foreshore as trustee for the benefit of the future State or States afterwards to be carved out of the territory. Congress has, however, the power to make grants of tide lands whenever it becomes necessary to do so in order to perform international

obligations or to effect the improvement of such lands for the promotion and convenience of commerce or to carry out other public purposes appropriate to the objects for which the United States holds such territory, but Congress has never undertaken to dispose of tide lands by general laws. Congressional grants of portions of the public domain which border upon the mean high water mark of navigable waters do not convey of their own force any title or right to the lands below the mean high water mark, and they do not in anywise impair the title and dominion of the future State when it shall be created. See *Wright v. Seymour*, 69 Cal., 122; *Weber v. Harbor Commissioners*, 18 Wall., 57, 64; and *Mann v. Tacoma Land Company*, 153 U. S., 273. When the United States acquired the Territory of Alaska by purchase it assumed undisputed dominion thereover and became the owner of all of the lands therein. The provisions of the general land laws of the United States were not applicable to it and the settlers afterwards settling upon lands within that Territory acquired no title in the soil. By the act of May 14, 1898 (30 Stat., 409), Congress extended the homestead laws to the District of Alaska and made provision for the disposition of the public lands therein under certain conditions. It expressly stated, however, in the third proviso of section 2 of that act that no rights which should be acquired thereunder were to anyway impair the title of any State or States that may hereafter be erected out of the District of Alaska to tide lands and beds of navigable waters, it being declared that the same shall continue to be held in trust by the United States for the future State or States which may hereafter be created. Said act did not, therefore authorize the disposition of the foreshores or tide lands in Alaska, and without some express legislation authorizing the disposition of such lands the title thereto cannot be acquired. As stated above Congress may, however, dispose of the foreshores or tide lands if it considers it expedient to do so. Such has been done in at least one case in Alaska. See the act of February 6, 1909 (35 Stat., 598), authorizing the disposition of tidal land on Cordova Bay.

By the fifth proviso of section 10 of the act of May 14, 1898, *supra*, the Secretary of the Interior was directed to reserve for the use of the natives of Alaska suitable tracts of land along the water front of any stream, inlet, bay or seashore to be used for landing places for canoes and other craft used by such natives.

Your first question is whether or not it is feasible to reserve for a landing place for the water craft of the natives of Juneau the tract described by Mr. Beattie in his letter of September 7, 1914, *supra*. In reply to that inquiry I will state that if said tract can be reserved at all it must be reserved under the authority contained in the fifth proviso of section 10 of the act of May 14, 1898, *supra*. The tract

described by Mr. Beattie appears to be a portion of the tide land area in front of the Auk Indian village. The question relative to the authority of the President to temporarily withdraw lands in Alaska by virtue of the aforesaid proviso, and also by virtue of the provisions of the act of June 25, 1910 (36 Stat., 847), has previously been considered by this office and by the Department of the Interior. In a case involving the question relative to the authority of the Executive to withdraw certain tide lands at Ketchikan, Alaska, for the use of natives for landing places for canoes and other craft, a question similar to that involved in Mr. Beattie's recommendation, this office took the view that such authority had not been conferred by the provisions of the fifth proviso of section 10 of the act of May 14, 1898, or by the provisions of the act of June 25, 1910, *supra*, and on June 23, 1914 (D-29055), the First Assistant Secretary issued instructions to this office in which its views were sustained. In view of the above referred to holding, the proposed reservation suggested by Mr. Beattie can not be made.

Referring to your second inquiry, it appears, according to the foregoing statement of the law relative to the extent of the boundaries of a riparian owner with reference to the foreshore, that said A. A. Gabbs has no proprietorship in the tide lands situated in front of his property. Under the law of littoral ownership, however, as it exists in the Territory of Alaska, a grant of land bordering on or bounded by navigable waters conveys to the grantee a free and unobstructed access to such waters.

It is to be inferred from the context of Mr. Beattie's report that the road referred to by you in your third inquiry is a public benefit. The question of whether or not said road may be permitted to remain by sufferance gives rise to the consideration of the manner by which structures erected upon tide lands may be authorized. By the law of England every building or wharf erected without license below high water mark where the soil is vested in the Crown, is a purpresture, and may at the suit of the King either be demolished or be seized and rented for his benefit if it is not a nuisance to navigation. In America the governments of the several Colonies, with a view to induce persons to erect wharves for the benefit of navigation and commerce, early allowed to the owners of lands bordering on tide waters greater rights and privileges in the shore below high water mark than such owners had enjoyed in England, but the nature and degree of such privileges differed in the different Colonies and in some were created by statute while in others they rested upon usage only. While it seems to be the general rule in the United States that buildings and other obstructions can be erected on tide lands below high water mark only by license of the United States or the State, yet it further seems that at an early date in the United States a

license to use the tide lands of the Territories, provided that such use did not interfere with public right, was implied. Such use, however, must be incidental or subordinate to public use and right and should the use under the implied license become detrimental to the public use it would thereupon be deemed a nuisance and the government, in the capacity of trustee, could compel the removal or abatement of the same. If the structure interferes with navigation a riparian owner whose right is interfered with in addition to his common right as one of the public, has also a private right which entitles him to maintain an action to restrain interference with the right of navigation and upon the same principle in the case of a nuisance to maintain an action to compel the abatement of such nuisance. It has been said that great inconvenience often results from the retention of the title to the shores of navigable waters in the public because the public cannot place structures upon the shore to the injury of the riparian owner and the riparian owner cannot place any structure there because he does not own the land. The maintenance of structures upon tide lands in the absence of public grant must be, therefore, by sufferance and not by right. See *Marcy v. Darling* (8 Pick., 283). In view of the foregoing I am of the opinion that since the above referred to road is for the use and benefit of the public, the maintenance of it may be permitted by sufferance, so long as there shall be no complaint made to the effect that its maintenance constitutes an interference with navigation or is detrimental to public rights.

In reply to your fourth inquiry, I will state that I am of the opinion that the rights of the natives of the Auk Indian village at Juneau with reference to the use of the tide flats do not differ from the rights of the public or of other riparian owners. The courts of the United States have been more liberal than the English courts with reference to their interpretation of the rights of riparian owners to the use of tide lands. It was said in the case of *Illinois v. Illinois C. R. Co.* (33 Fed., 730) that a riparian owner has the right by virtue of his ownership to connect his shore line by artificial connections with outside navigable water subject to such regulations as may be established by statute, and it has been quite generally recognized throughout the United States that riparian owners, as members of the general public, have a right to utilize the soil of tide lands for the erection of such wharves and piers as can be placed thereupon without injury to the rights of the public. See *Angell on Tide Waters*, 127, 152. The erection of private wharves and piers is, however, regulated by the statutes of the several States, and where there has been no statutory regulation pertaining to the subject the maintenance of such wharves and piers can be permitted only by sufferance or by an implied license.

The courts of the Territory of Alaska have considered this question in a number of cases, and according to the tenor of the same a riparian owner has a right to build a wharf upon tide lands in front of his property. See *Sutter et al. v. Heckman et al.* (1 Alaska Reports, 81), *Lewis v. Johnson* (1 Alaska Reports, 529), and *Pacific Coast Company v. McCloskey* (3 Alaska Reports, 77). A number of cases have arisen in which the courts have granted injunctions preventing the obstruction of such right of access. See *Dalton v. Hazelet* (182 Fed., 561). See also *Decker v. Pacific Coast Company* (164 Fed., 974) in which the issuance of an injunction was denied for the reason that it was not clearly shown that the obstruction complained of interfered with access of the riparian owner. If structures have been erected upon tide lands in Alaska, the persons erecting the same cannot thereby obtain any vested interest in such tide lands, since those lands are held in trust by the United States for the future State and no prescriptive right or title can be acquired against it to such lands. *Sutter v. Heckman, supra*, and *Lewis v. Johnson, supra*.

The right of littoral owners to erect private wharves in front of their property is, however, at all times subject to a limitation, that is, that such wharves shall not interfere with the right of navigation. The limitation usually offsetting the right to construct wharves and piers is based upon the ground that the wharves and piers unreasonably interfere with the right of public navigation and are, therefore, nuisances, but a wharf is not *per se* a nuisance and in order to abate it, it must be shown to be such. See *Yates v. Milwaukee* (10 Wall., 497). In the majority of cases involving actions for the abatement of wharves, the request for removal on the ground that the wharf is a purpresture merely and an unlawful encroachment upon public property, is usually denied and the issuance of an injunction compelling the abatement is usually dependent upon the answer to the question of whether or not the structure constitutes a nuisance.

As set forth above, Congress undoubtedly has the power to make disposition of tide lands of a Territory before such Territory shall have become a State. On December 23, 1913, H. R. Bill No. 11247 was introduced in Congress by Mr. Wickersham, Delegate from Alaska. That bill proposed to authorize the survey, platting, dedication, sale and rental of the tide lands and the harbor area in front of the town of Juneau, to the end that the town might erect and maintain wharves, docks, warehouses and other aids to navigation. Upon request the Department of the Interior submitted a report to the House Committee on Public Lands approving the purpose of the bill, but recommended that the War Department should be consulted as the jurisdiction in the establishment of harbor lines and

improvements is conferred by statute upon the Secretary of War. The 63rd Congress adjourned without taking action upon the bill. It may be that a similar bill will be introduced during the next Congress or during some subsequent Congress. Legislation such as the above referred to bill proposed to make may probably prove in the end to be the best remedy to prevent unlawful encroachment upon the tide lands referred to herein.

### STATE OF IDAHO v. ROBERSON.

*Decided August 14, 1915.*

#### SURVEY ON APPLICATION—PREFERENCE RIGHT—HOMESTEAD ENTRY.

A homestead entry allowed for lands withdrawn and surveyed upon the application of the State of Idaho under the act of August 18, 1894, prior to expiration of the sixty-day preference right period accorded the State by that act within which to make selection, attaches at the expiration of that period in the absence of a valid selection of the lands by the State; and the subsequent ratification by the State legislature of an invalid selection made within that period has no retroactive effect to impair the rights of the entryman.

*JONES, First Assistant Secretary:*

The State of Idaho, in its appeal from the decision rendered adverse to it by the General Land Office on October 27, 1913, contends that it has a right to the S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 25, T. 41 N., R. 4 E., lot 4, Sec. 30, and lot 1, Sec. 31, T. 41 N., R. 5 E., B. M., under its school indemnity lieu selection lists, Lewiston 02844, 02907, and 02930, presented August 27, 1909, superior to the right claimed by Wallace C. Roberson under his homestead entry, Lewiston 02670, made July 3, 1909, for these lands.

The State bases its claim on an alleged preference right asserted under the act of August 18, 1894 (28 Stat., 372, 394), under which it on March 15, 1899, and July 5, 1901, presented its applications for the survey of the townships in which these lands are located. The withdrawal of these townships by the Commissioner of the General Land Office on March 29, 1899, under the State's first application are ineffective and conferred no rights on the State, for the reason that the notice required by that act was not published (*Thorpe et al. v. State of Idaho*, 43 L. D., 168); but under the State's last application a withdrawal was made on January 20, 1905, which became effective on that date (*George A. McDonald v. Northern Pacific Railway Company et al.*, D-18548, unreported). The selections in question, although made within sixty days after the date on which the township plats were filed, July 1, 1909, were made without the authority or sanction of the State of Idaho (*Balderston v. Brady*, 107 Pac., 493), it being held in the cited case that selections so made "were

void and of no effect, having been made in the face of the constitution and laws of Idaho," until they were ratified and confirmed by the act of the legislature of that State approved February 8, 1911 (*Rogers v. Hawley et al.*, 115 Pac., 687). That act "had no retroactive effect and in nowise impaired the rights of (entrymen) *bona fide* settlers upon the land whose claims had attached long before." (*Thorpe et al. v. State of Idaho*, 43 L. D., 168, 171.)

No valid selection list having been presented within the prescribed preference-right period, it must be held that Roberson's rights under his entry attached at the expiration of that period and are now superior to the claims of the State.

The State urged in its appeal that Roberson's entry does not defeat its selections; because the entry was made at a time when the lands entered were within a national forest; that the entry was therefore void until it was confirmed by the act of Congress approved March 3, 1911 (36 Stat., 1084), which was after the State's selections had attached upon their being confirmed by the act of the legislature approved February 8 of that year.

This conclusion is based on an erroneous assumption as to the validity of Roberson's entry, because that entry was not in fact erroneously allowed and needed no confirmation, it having been allowed under the act of June 11, 1906 (34 Stat., 233), which expressly authorizes homestead entries within national forests.

The decision appealed from is, for the reasons given, hereby affirmed, and the State selections in question will be rejected as to the tracts above mentioned. The action here taken is not to be construed as in any way sanctioning or recognizing the validity of the State's selection of the lands not involved in this case, and all questions involving its validity will be fully considered when it is submitted for approval.

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### NORTHERN PACIFIC RY. CO. v. HEWITT.

*Decided August 13, 1913.*

NORTHERN PACIFIC ADJUSTMENT—ACT OF JULY 1, 1898.

Where the conflicting claims of a settler and the Northern Pacific Railway Company to a tract of land were finally adjudicated by the land department in favor of the settler and patent issued to him, prior to the act of July 1, 1898, and the company had prior to that date disposed of all its interest in the land, a suit in court on behalf of the purchaser, involving the conflicting claims to the land, pending at the date of the act, does not bring the case within the purview of the act and entitle the company to adjustment thereunder after final determination of the matter by the court in favor of the settler; but in such case the company is relegated to its ordinary right of indemnity to make up such loss.

JONES, *First Assistant Secretary*:

The Northern Pacific Railway Company appealed from decision of the Commissioner of the General Land Office of September 30, 1911, denying its application under act of July 1, 1898 (30 Stat., 597, 620), for adjustment of its claim to NE  $\frac{1}{4}$ , Sec. 13, T. 132 N., R. 57 W., Fargo, North Dakota.

The land is in indemnity limits of grant to Northern Pacific Railroad, now Railway, Company by act of July 2, 1864 (13 Stat., 365), and was selected March 19, 1883, rearranged October 12, 1887, and February 23, 1892, canceled and case closed November 5, 1894, for prior claim of Fred Hewitt's preemption cash entry, No. 12629, wherein settlement was alleged July 10, 1882, and was patented June 22, 1895. At a time not shown in the land office record here, said in the brief to have been July 10, 1895, suit of ejectment was brought by one Schultz, purchaser from the railway company, in the State courts, North Dakota, to recover possession and title from Hewitt, wherein Schultz recovered judgment in the State Supreme Court May 27, 1898 (76 N. W. Rep., 230). Hewitt sued out a writ of error to the Supreme Court of the United States, and ultimately Hewitt's title was established, January 7, 1901 (*Hewitt v. Schultz*, 180 U. S., 139).

The question involved in this case is an important one, namely, whether the Northern Pacific Railway Company has a right of adjustment under the act of July 1, 1898, respecting a tract within its indemnity limits to which it had been as early as 1894 held by the land department to have no right, title, or interest; which tract was, during the following year (1895) patented to a settler, whose claim was held to be superior to the claim of the railroad. Prior to the passage of the act of 1898 the railroad company had conveyed its right, title, and interest in this land to another, who had begun a suit against the Government's patentee in order to enforce his claimed right under purchase from the railroad, which suit was prosecuted after the passage of the act of 1898 to the Supreme Court of the United States, resulting in a decision sustaining the land department in patenting the land to the settler.

The Commissioner of the General Land Office held that this tract was not subject to adjustment under the act of 1898. I agree with the Commissioner, and my reasons therefor are:

1. The object of the act of 1898 was to settle pending disputes and avoid vexatious litigation through adjustment upon principles deemed just and consistent with the rights of all concerned—the Government, the railroad grantee, and individual claimants. *Humbird v. Avery* (195 U. S., 480, 499).

2. This was a settled controversy in the land department long prior to the passage of the act of 1898, resulting in the issuance of

the patent of the United States to the settler, which was held to be a superior claim to that asserted by the railroad company under its indemnity selection.

3. This claimed right to adjustment is not within the spirit of the act of 1898, for clearly the purpose of the act of 1898 was to avoid controversy in the courts and this controversy was carried on after the passage of the act of 1898, in disregard of its provisions.

4. By the specific provisions of the act of 1898 the railroad grantee, or its successor in interest, shall "not be bound to relinquish lands sold or contracted by it." As this land, or all the interest that the company had in it, had been sold as early as 1895, it would seem that the facts of the case bring it within the exception to the act of 1898 and that the act has no operation thereon.

5. It is suggested that as the railroad title failed, Schultz had a right of action against the railway company to recover the money paid in purchase of the title, and for that reason it is suggested that the railway company should have the right of adjustment under the act of 1898, to, presumably, recoup its losses. I do not understand that it was at all the purpose of the act of 1898 to enable the railroad company to recoup losses, except those losses that were occasioned by its surrender in favor of the Government transferee under the act. Certainly it was not the design of the act of 1898 to enable the railroad company to recoup losses it might not otherwise satisfy under the terms of its grant.

To my mind, the present proposition of the railway company is without legal foundation. To recapitulate: It had a controversy in the land department, where it lost; whereupon the land was patented to a settler. This occurred many years before the passage of the act of 1898. In furtherance of its transfer of its interest in the land, a suit was brought against the Government's transferee. By the terms of the act of 1898 the railway company could not be forced to make adjustment of this tract with the settler because of the sale thereof by the company, and had the purchaser won out he could have dispossessed the settler, depriving him of the very fruits that the act of 1898 was designed to protect him in. Failing to have the title of its purchaser upheld, the company now appeals to the Department to be allowed to adjust. In other words, to give it a tract—another tract—of land for which it has given nothing under the act of 1898, and that the only reason that can be suggested therefor is that it has to return to the purchaser the money paid in consummation of the purchase, after the Government had determined that no title existed. This it might have been forced to do in any instance of sale where its title failed and I can not see how this fact can in anywise affect the solution of the question at bar. If it does, then truly the act was one entirely in favor of the railroad company and

its benefits, intended to be extended to the settler, namely, the right to retain his tract without forcing him to an expensive controversy in the courts, is entirely dissipated.

The decision appealed from is affirmed.

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#### NORTHERN PACIFIC RY. CO. v. HEWITT.

Motion for rehearing of departmental decision of August 13, 1913, 44 L. D., 449, denied by First Assistant Secretary Jones December 31, 1915.

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#### OPENING FORT BERTHOLD LANDS.

BY THE PRESIDENT OF THE UNITED STATES.

#### A PROCLAMATION.

Pursuant to the authority vested in me by the act of Congress approved June 1, 1910 (36 Stat., 455), as amended by the act approved August 3, 1914 (38 Stat., 681), I, WOODROW WILSON, President of the United States of America, do hereby proclaim that all the lands in the Fort Berthold Indian Reservation, in North Dakota, which on account of their containing coal, were reserved from allotment and other disposition under the aforesaid act of June 1, 1910, and which, under the provisions of the aforesaid act of August 3, 1914, have been classified as agricultural lands of the first class, agricultural lands of the second class and grazing lands, shall be disposed of under the general provisions of the homestead laws and of said acts of Congress and be opened to settlement and entry and be settled upon, occupied and entered in the following manner and not otherwise: *Provided*, That patents issued for such lands shall contain a reservation to the United States of any coal that such lands may contain, to be held in trust for the Indians belonging to and having tribal rights on the Fort Berthold Indian Reservation, but any entryman shall have the right at any time before making final proof of his entry, or at the time of making such final proof, to a hearing for the purpose of disproving the classification as coal land of the land embraced in his entry, and if such land is shown not to be coal land a patent without reservation shall issue: *Provided further*, That homestead settlers may commute their entries under Section 2301 of the Revised Statutes by paying for the land entered at the appraised price.

1. All persons qualified to make a homestead entry for said lands may, on and after October 18, 1915, and prior to and including Octo-

ber 30, 1915, but not thereafter, present to John McPhaul, Superintendent of the opening, in person, or to some person designated by him, at the cities of Minot, Bismarck or Plaza, North Dakota, sealed envelopes containing their applications for registration, but no envelope must contain more than one application; and no person can present more than one application in his own behalf and one as agent for a soldier or sailor, or for the widow or minor orphan child of a soldier or sailor, as hereinafter provided.

2. Each application for registration must show the applicant's name, postoffice address, age, height and weight, and be sworn to by him at Minot, Bismarck or Plaza, North Dakota, before some notary public designated by the Superintendent.

3. Persons who were honorably discharged after ninety days' service in the Army, Navy or Marine Corps of the United States during the Civil War, the Spanish-American War, or the Philippine Insurrection, or their widows or minor orphan children, may present their applications for registration either in person or through their duly appointed agents, but no person can act as agent for more than one such applicant, and all applications presented by agents must be signed and sworn to by them at one of the places named and in the same manner in which other applications must be sworn to and presented.

4. Beginning at 10 o'clock a. m. on November 4, 1915, at the said city of Minot, and continuing thereafter from day to day, Sundays excepted, as long as may be necessary, there shall be impartially taken and selected indiscriminately from the whole number of envelopes so presented such number thereof as may be necessary to carry the provisions of this Proclamation into effect, and the applications for registration contained in the envelopes so selected shall, when correct in form and execution, be numbered serially in the order in which they are selected, beginning with number one, and the numbers thus assigned shall fix and control the order in which the persons named therein may make entry after the lands shall become subject to entry.

5. A list of the successful applicants, showing the number assigned to each, will be conspicuously posted and furnished to the press for publication as a matter of news, and a proper notice will be promptly mailed to each of these applicants.

6. Beginning at 9 o'clock a. m. on May 1, 1916, and continuing thereafter on such dates as may be fixed by the Secretary of the Interior, persons holding numbers assigned to them under this Proclamation will be permitted to designate and enter the tracts they desire as follows:

When a person's name is called, he must at once select the tract he desires to enter and will be allowed ten days following date of selection to complete entry at the land office. During such period, he must

file his homestead application at the land office, accompanying the same with the usual filing fees and commissions and in addition thereto, one-fifth of the appraised value of the tract selected. To save expense incident to an additional trip to the land and to return to the land office, he may, following his selection, execute his homestead application for the tract selected within the land district and file same in the land office, where it will be held awaiting the payment of the fees and commissions and one-fifth of the appraised value of the land. In that event, the payment must be made within the ten days following the date of selection. Payments can be made only in cash, by certified checks on national and state banks and trust companies, which can be cashed without cost to the Government, or by postoffice money orders made payable to the receiver of the land office. These payments may be made in person, through the mails or any other means or agency desired, but the applicant assumes all responsibility in the matter. He must see that the payments reach the land office within the ten days allowed, and where failure occurs in any instance where the application has been filed in the land office without payment, as herein provided for, the application will stand rejected without further action on the part of the local officers.

In case of declaratory statements, allowable under this opening, the same course may be pursued, except that the filing fees must be paid within the ten days following date of selection, the party having six months after filing within which to complete entry. Soldiers or sailors or their widows or minor orphan children making homestead entry of these lands must make payment of fees, commissions and purchase money as is required of other entrymen.

The purchase money not required at the time of entry may be paid in five equal installments. These payments will become due at the end of two, three, four, five and six years after the date of entry, unless commutation proof is made. If such proof is made, all the unpaid installments must be paid at that time. Where three-year proof is submitted, the entryman may make payment of the unpaid installments at that time or at any time before they become due and final certificate will issue, in the absence of objection, upon such payment being made. If any entryman fails to make any payment when it becomes due, all his former payments will be forfeited and his entry will be canceled.

7. No person can select more than one tract or present more than one application to enter or file more than one declaratory statement in his own behalf.

8. If any person fails to designate the tract he desires to enter on the date assigned to him for that purpose, or if, having made such designation he fails to perfect it by making entry or filing and payments as herein provided, or if he presents more than one applica-

tion for registration or presents an application in any other than his true name, he will forfeit his right to make entry or filing under this Proclamation.

9. None of the lands opened to entry under this Proclamation shall become subject to settlement or entry prior to 9 o'clock a. m. on June 1, 1916, except in the manner prescribed herein; and all persons are admonished not to make any settlement prior to that hour on lands not covered by entries or filings made by them under this Proclamation. At 9 o'clock a. m. on June 1, 1916, all of said lands which have not then been entered under the provisions of this Proclamation will become subject to settlement and entry under the general provisions of the homestead laws and the aforesaid Acts of Congress.

10. The Secretary of the Interior shall make and prescribe such rules and regulations as may be necessary and proper to carry the provisions of this Proclamation and of the said Acts of Congress into full force and effect.

In Witness Whereof I have herunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this seventeenth day of September, in the year of our Lord one thousand nine hundred and fifteen, and of the Independence of the United States the one hundred and fortieth.

WOODROW WILSON.

[SEAL.]

By the President:

FRANK L. POLK,

*Acting Secretary of State.*

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## OPENING FORT BERTHOLD LANDS.

### REGULATIONS.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE.

*Washington, D. C., September 21, 1915.*

JOHN MCPHAUL,

*Superintendent of Opening and Sale of Indian Reservations.*

SIR: Pursuant to the Proclamation of the President issued September 17, 1915 [44 L. D., 452], for the opening of certain classified lands within the Fort Berthold Indian Reservation, in North Dakota, the following rules and regulations are hereby prescribed:

1. Applications for registration and powers of attorney for the appointment of agents by soldiers or sailors or their widows or minor

orphan children must be made on blank forms prescribed by the Superintendent.

2. No notary public shall be designated for the purpose of administering oaths to applicants for registration who was not appointed prior to September 1, 1915, and on that date a resident of the county in which he shall act, and the Superintendent is hereby authorized and directed to prescribe such plans, rules and regulations governing the action of such notaries public and in relation to the registration as may in his judgment be necessary.

3. Envelopes used in presenting applications for registration should be three and one-half inches wide and six inches long and they must all be plainly addressed to "John McPhaul, Superintendent, Minot, North Dakota," and the words "Registration Application" must be plainly written or printed across the front and at the left end of the envelope.

4. Blank forms of application for registration and addressed envelopes to be used in forwarding applications to the Superintendent will be furnished to each applicant by the Superintendent through the notaries public before whom the applications must be sworn. Blank powers of attorney to be used by soldiers or sailors or their widows or minor orphan children in the appointment of agents may be obtained from the Superintendent at Washington, D. C., prior to October 15, and after that date from him at Minot, North Dakota.

5. No envelope should contain more than one application for registration or contain any other paper than the application. Proof of naturalization and of military service, and other proof required (as in case of second homestead entries), will be exacted before the entry is allowed, but should not accompany the application for registration.

6. As soon as the Superintendent of the Opening receives an envelope addressed to him with the words "Registration Application" endorsed thereon, he will (if such envelope bears no distinctive marks or words indicating the name of the person by whom it was presented) deposit it in a metal can set apart for the reception of such envelopes. The cans used for this purpose must be so constructed as to prevent envelopes deposited therein from being removed therefrom without detection, and they must be safely guarded by representatives of the Government until they are publicly opened on the day when the selections authorized by the Proclamation are to be made. All envelopes which show the name of the person by whom they were presented will be opened as soon as they are received by the Superintendent, and the applications therein will be returned to the applicants.

7. On November 4, 1915, the cans containing the applications for registration will be publicly opened and all envelopes contained therein will be thoroughly mixed and distributed preparatory to the

selection and numbering thereof in the manner directed by said Proclamation.

8. Numbers will not be assigned to a greater number of persons than will be reasonably necessary to induce the entry of all the lands subject to entry in said Reservation under said Proclamation. The applications for registration presented by persons to whom numbers are not assigned will be carefully arranged and inspected, and if it is found that any person has presented more than one application for registration in his own behalf and one application as agent, or presented his own application in any other than his true name, or in any other manner than that directed by said Proclamation, he will be denied the right to make entry under any number assigned to him.

9. When an application for registration has been selected and numbered, as prescribed by said Proclamation, the name and address of the applicant and the number assigned to him will be publicly announced, and the application will be filed in the order in which it was numbered.

10. All selected applications which are not correct in form and execution will be stamped "Rejected—Imperfectly Executed," and filed in the order in which they were rejected.

11. Notices of numbers assigned will be promptly mailed to all persons to whom numbers are assigned, and to the agents, in cases where numbers are assigned to soldiers who registered by agents, at the postoffice address given in their applications for registration, but no notice whatever will be sent to persons to whom numbers are not assigned.

12. Notice of the time and place of making entry will be mailed to such number of persons holding numbers as may be reasonably necessary to induce the entering of all the lands desirable for entry.

13. Persons who receive notice of their right to make entry must select and enter the tracts they desire when their numbers are called, as follows: Numbers 1 to 50, inclusive, on May 1, 1916; numbers 51 to 100, inclusive, on May 2, 1916; numbers 101 to 200, inclusive, on May 3, 1916; and so on, at the rate of one hundred on each succeeding day, Sundays and legal holidays excepted, until the persons holding the first one thousand numbers have been given opportunity to make their selections, and after that the persons holding numbers above one thousand may similarly appear at the rate of one hundred and fifty daily.

14. All entries must, as far as possible, embrace only lands listed and appraised as one tract, and no applicant will be permitted to omit any unentered part of a listed tract from his application and include therein, in lieu thereof, part of another or different listed tract; but where a listed tract embraces less than a quarter section, it and part of another and different listed tract may be embraced in the

same entry. In cases where an applicant desires to enter less than a quarter section, he may apply for any legal subdivision, or subdivisions, of a listed tract, and where part of a listed tract has been entered the remaining part and part of another adjacent listed tract may be embraced in the same entry.

15. If any person who has been assigned a number entitling him to make entry fails to appear and make his selection when his name is called, his right to select will be passed until after all other applicants assigned for that day have been disposed of, when he will be afforded another opportunity to make his selection on that day. If any person fails to make his selection on the date assigned to him for that purpose or if having made a selection fails to perfect it by making entry or filing and payments, as required, he will be deemed to have abandoned his right to make entry prior to June 1, 1916, but will not thereby exhaust his homestead rights.

16. If any person holding a number dies before the date on which he is required to make entry, his widow or any one of his heirs may appear and make a selection, in her or his own individual right, under his number, on that date, and thereafter make entry within ten days.

17. At the time of appearing to make entry, each applicant must, by affidavit, show his qualifications to make a homestead entry. If an applicant files a soldier's declaratory statement, either in person or by agent, he must furnish evidence of military service and honorable discharge. All foreign born persons must furnish either the original or proper certified copies of their declaration of intention to become citizens or the original or proper certified copies of the order of the court admitting them to full citizenship. If persons who were not born in the United States claim citizenship through their fathers' naturalization, while they were under twenty-one years of age, they must furnish a proper certified copy of the order of the court admitting their fathers to full citizenship and evidence of their minority at that time.

18. Applicants will not be required to swear that they have seen or examined the land, before making application to enter, and the usual non-mineral and non-saline affidavits will not be required with applications to enter presented prior to June 1, 1916, but evidence that the lands do not contain mineral other than coal, and of their non-saline character, must be furnished by the entrymen before their final proofs are accepted.

19. Applications filed prior to June 1, 1916, to contest entries allowed for these lands will be immediately forwarded to the General Land Office, where they will be at once carefully examined and forwarded to the Secretary of the Interior with proper recommendations, when the matter will be promptly decided, and this regula-

tion will supersede, during the period between May 1 and June 1, 1916, all existing rules of practice or regulations relative to contests, in so far as they affect entries of these lands. The procedure relative to the presentation, amendment, allowance and rejection of applications to file soldiers' declaratory statements and applications to enter these lands, will be controlled by existing regulations and rules of practice.

Very respectfully,

CLAY TALLMAN, *Commissioner*.

Approved September 21, 1915.

FRANKLIN K. LANE,  
*Secretary.*

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[ACT AUGUST 3, 1914, 38 STAT., 681.]

An Act To provide for the disposal of certain lands in the Fort Berthold Indian Reservation, North Dakota.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the lands in the Fort Berthold Indian Reservation, North Dakota, which on account of their containing coal were reserved from allotment and other disposition under the Act of June first, nineteen hundred and ten, entitled "An Act to authorize the survey and allotment of lands embraced within the limits of the Fort Berthold Indian Reservation, in the State of North Dakota, and the sale and disposition of a portion of the surplus lands after allotment, and making appropriation and provision to carry the same into effect," shall be subject to disposal under the provisions of said Act: *Provided*, That patents issued for such lands shall contain a reservation to the United States of any coal that such lands may contain, to be held in trust for the Indians belonging to and having tribal rights on the Fort Berthold Indian Reservation, but any entryman shall have the right at any time before making final proof of his entry, or at the time of making such final proof, to a hearing for the purpose of disproving the classification as coal land of the land embraced in his entry, and if such land is shown not to be coal land a patent without reservation shall issue.

SEC. 2. That the coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal, and the proceeds arising from the disposal of such coal deposits or from the leasing or working thereof shall be deposited in the Treasury of the United States and shall be applied in the same manner as the proceeds derived from the disposition of the lands embraced in the Fort Berthold Indian Reservation. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right at all times to enter upon the lands selected, entered, or patented, as provided by this Act, for the purpose of prospecting for coal thereon, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any

such land, or the right to mine or remove the same, may re-enter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That the entryman or the owner under such limited patent shall have the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits.

SEC. 3. That the President of the United States shall appoint a commission consisting of three persons to inspect, classify, appraise, and value all of the lands described in section one of this Act that shall not have been allotted in severalty to said Indians, said commission to be constituted as follows: One of the commissioners shall be a person holding tribal relations with said Indian, one a representative of the Interior Department, and one a resident citizen of the State of North Dakota. That within twenty days after their appointment said commissioners shall meet and organize by the election of one of their number as chairman. The said commissioners shall then proceed to personally inspect and classify and appraise, in one-hundred-and-sixty-acre tracts, all of the remaining lands described in section one of this Act except section sixteen and section thirty-six under such rules and regulations as the Secretary of the Interior may prescribe. In making such classification and appraisal said lands shall, without regard to the coal they may contain, be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timberland. That said commissioners shall be paid a salary of not to exceed \$10 per day each while actually employed in the inspection and classification of said lands and necessary expenses, exclusive of subsistence, to be approved by the Secretary of the Interior, such inspection and classification to be completed within six months from the date of the organization of said commission.

SEC. 4. That for the purpose of carrying into effect the provisions of this Act the sum of \$10,000, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated: *Provided*, That the said appropriation shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to the Indians of Fort Berthold Indian Reservation, North Dakota.

Approved, August 3, 1914 (38 Stat., 681).

### TILLIAN ET AL. v. KEEPER.

*Decided October 4, 1915.*

#### NEW MEXICO SCHOOL GRANT—COAL LANDS.

Sections 16 and 36 in the Territory, now State, of New Mexico, surveyed prior to the act of June 21, 1898, making a grant of said sections to the Territory for the support of common schools, passed to the Territory at the date of the act, unless at that time reserved, otherwise disposed of, or known to be mineral.

*JONES, First Assistant Secretary:*

This case comes before the Department on cross-appeals by all the parties thereto from the decision of the Commissioner of the

General Land Office of December 18, 1913, holding for rejection in part the coal land application, 015309, of George A. Keepers, Jr., for the E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 16, T. 15 N., R. 18 W., N. M. P. M., Santa Fe land district, New Mexico.

On May 12, 1911, Keepers filed a coal declaratory statement for the land above described, and on May 15, 1911, presented therefor an application to purchase. June 29, 1911, Joseph Tillian, Alejandro Montoya and Pedro M. Pino filed in the local office a verified protest against the application, asserting generally that the land was non-coal in character, and that they had established residence thereon. On the same date the State of New Mexico, through its Commissioner of Public Lands, filed a protest against the application asserting the claim of the State under the act of June 21, 1898 (30 Stat., 484), granting to the Territory of New Mexico sections 16 and 36 for the support of common schools. On August 7, 1911, a protest was also filed against the application by the Field Service of the General Land Office.

Hearing was had on these several protests, and from the testimony adduced the local officers found that the land contained workable deposits of coal and was known to be coal in character prior to June 21, 1898, the date of the granting act, when the State's rights would have otherwise attached. On appeal this action of the local officers was in the decision complained of affirmed by the Commissioner as to the NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , and SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , but reversed as to the SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ .

The township embracing the land in question was surveyed in 1881, and the plat approved and accepted and filed in the local office the same year. In the field notes of the survey of the township under the heading "General description" the following notation appears:

Soil sandy, 2nd and 4th rate. A coal vein on line between Secs. 24 and 25 which is being worked at a point north in Sec. 24.

By section 1 of the act of June 21, 1898, *supra*, it was provided:

That sections numbered sixteen and thirty-six in every township of the Territory of New Mexico, and where such sections, or any parts thereof, are mineral or have been sold or otherwise disposed of by or under the authority of any act of Congress, other non-mineral lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said Territory for the support of common schools, such indemnity lands to be selected within said Territory in such manner as is hereinafter provided: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants of this act; but such reservations shall be subject to the indemnity provisions of this act.

The grant established by this act is one *in presenti* and except as to matters of minor importance, which do not affect the determina-

tion of this case, differs from grants of school lands to States only in the fact that it attached immediately upon the approval of the act as to lands theretofore identified by survey, whereas such grants to States did not become effective until the States were admitted into the Union. It is, therefore, governed and controlled by substantially the same rules as those applied to such grants to States upon their admission into the Union. Defining the right of a State under a grant of land for school purposes the Supreme Court in *Cooper v. Roberts* (18 How., 173) said at page 179:

The State of Michigan was admitted to the Union, with the unalterable condition "that every section No. 16, in every township of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools." We agree, that until the survey of the township and the designation of the specific section, the right of the State rests in compact—binding, it is true, the public faith, and dependent for execution upon the political authorities. Courts of justice have no authority to mark out and define the land which shall be subject to the grant. But when the political authorities have performed this duty, the compact has an object, upon which it can attach, and if there is no legal impediment the title of the State becomes a legal title. The *jus ad rem* by the performance of that executive act becomes a *jus in re*, judicial in its nature, and under the cognizance and protection of the judicial authorities, as well as the others.

To the same effect also is the decision of the Supreme Court in *Beecher v. Wetherby* (95 U. S., 517).

The particular tracts here in question had long been identified by approved survey at the date of the approval of the act of June 21, 1898. Under the principle above announced by the Supreme Court the legal title to said tracts vested absolutely in the Territory, now State of New Mexico, upon the approval of the act, unless they were known at that date to be valuable on account of coal (*Mullan v. United States*, 118 U. S., 271) or other mineral (*Mining Company v. Consolidated Mining Company*, 102 U. S., 167), it not appearing that they were otherwise excepted from the operation of the grant. See also, *Deffeback v. Hawke* (115 U. S., 392); *Colorado Coal and Iron Company v. United States* (123 U. S., 307); *Davis v. Webbald* (139 U. S., 507); *Virginia Lode* (7 L. D., 459); *State of Colorado* (6 L. D., 412); *Abraham L. Miner* (9 L. D., 408); *Warren et al. v. State of Colorado* (14 L. D., 681); *Rice v. State of California* (24 L. D., 14); *State of Utah* (32 L. D., 117). If, however, on the other hand, said tracts were at that date known to be valuable for mineral, title thereto did not pass under the grant but remained in the General Government and subject to its disposal under appropriate laws. *Hydenfeldt v. Daney Co.* (93 U. S., 634); *State of South Dakota v. Trinity Gold Mining Company* (34 L. D., 485); *State of South Dakota v. Delicate* (34 L. D., 717).

The land in controversy was not returned as coal land by the surveyor and it does not appear that at the date of the grant any valid claim was being asserted thereto under the coal land laws. It is true that as early as 1883, and thereafter, coal declaratory statements had from time to time been filed on the NE.  $\frac{1}{4}$  of said Sec. 16, and on January 5, 1898, a coal filing was made therefor by one Catherine Leaden. These filings, however, were all abandoned and it does not appear that any attempt was made on the part of Leaden to open or improve a mine of coal on the land or any portion thereof or to purchase the land under the coal land laws. Presumptively, therefore, the title to the land passed to the Territory of New Mexico at the date of the grant, and this presumption can only be overcome by the submission of satisfactory proof that the land was known to be coal in character at that time. Charles L. Ostenfeldt (41 L. D., 265).

The land lies on the northerly flank of a valley carved out by the Rio Puerco (which flows in a southwesterly direction across the southeast corner of the SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ ) and within the horizon of the lower coal subgroup of the lower Mesa Verde formation, whose base consists of a massive gray sandstone about 20 feet in thickness, and which in turn is underlain by a bed of what is known as red sandstone that is exposed at places a short distance to the east of the land and in the southeast corner of the SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ . Within said lower formation of the Mesa Verde are five coal beds designated locally (reading from top to bottom) as the Crown Point, Thatcher, Black Diamond, Otero and Talbot, the latter being about 30 or 35 feet above the red sandstone. The two beds first named have been eroded from the area, if they ever existed thereon, and the Otero and Talbot, which are exposed and have been operated in sections 14 and 24, a mile and a half or more to the east of the land, are shown to thin in the direction of the land.

The Black Diamond bed, which is approximately five feet thick, outcrops or is otherwise exposed in the extreme northwest corner of the NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , which it underlies to the extent of something less than an acre, and also in the southeast portion of the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ . The easterly line of the crop between these points is concealed by a mass of wash and detritus to a depth of from 90 to 150 feet, but is shown to extend in a northerly and southerly direction through the eastern portion of the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ . These disclosures antedate the grant to the State and establish the existence of the bed within the limits of the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  prior thereto. The bed dips to the west, however, and hence does not underlie any portion of the SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , nor a sufficient portion of the NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  to impress that subdivision with any value on account of its presence there.

On a south facing escarpment of a mesa occupying the northern portion of the NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  are exposed three beds designated by witnesses for the protestants as Nos 2, 3 and 4. The uppermost of these two beds, the No. 2, is situated stratigraphically about 40 feet below the Black Diamond horizon and underlies the northerly portion of the NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  to the extent of 10 or 12 acres, and dips to the north and west. On this bed a prospecting tunnel about 145 feet in length was driven in 1894 by one Edward Quinn, and the coal removed in its excavation was disposed of to residents of the town of Gallup which adjoins the land on the south. According to the testimony of Quinn, the opening was abandoned in 1894 for the reason that he struck a fault which cut off or otherwise interfered with the mining of the coal, and also because he concluded to try his fortune at another place in the vicinity of the land where there was a thicker bed of coal. This witness gives the thickness of the bed disclosed in the tunnel as 22 inches. It is testified, however, by Leslie E. Gillett, a geologist employed as a mineral inspector by the General Land Office, and who has had much experience in the examination of coal lands in the Gallup coal fields, wherein the land is situated, that a careful measurement made by him of the bed showed the following section:

- Sandstone, shale roof.
- Black shale four inches.
- Coal eight inches.
- Shale eight inches.
- Coal eleven inches.
- Shale one inch.
- Very nearly coal seven inches, not workable.
- Black shale two inches.
- Shale Floor.

It is also shown that near the face of the tunnel there is a roll which has reduced the thickness of the coal to one foot, and that the shale bed had also increased in thickness. This, it is testified, is probably the equivalent of the Otero bed, which is shown to contain three feet two inches of coal in section 14. The No. 3 bed lies stratigraphically about 25 feet below No. 2. It is shown to consist of 15 feet of shale containing three seams of dirty coal, each 6 inches in thickness, separated from one another by bands of earth shale. The uncontroverted testimony is to the effect that this bed is valueless for coal mining purposes. Underlying the latter bed at a depth of about 75 feet below the horizon of the Black Diamond, is the No. 4 bed, which is well exposed at an opening a few feet to the east of the east line of the NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ . Measurements of this bed, made by Gillett at that opening, showed the following section:

- Black shale roof.
- Slightly carboniferous shale 7 inches.

Coal 5 inches.

Shale 1 foot.

Coal 8 inches.

Very dirty coal unfit to use 7 inches.

Shale 2 inches.

Floor.

This bed dips to the northwest and underlies about 30 acres of the NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  and about 5 acres of the SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ . This, it is testified, is the equivalent of the Talbot bed, which in section 14 contains  $2\frac{1}{2}$  feet of clean coal, and to the southeast of that in section 24 coal of the thickness of 4 feet, 10 inches. There is testimony to the effect that in what is known as the Mancos shale, which underlies the red sandstone bed, above referred to, there are a few thin seams of coal from 6 to 10 inches thick, but that this coal is nonworkable in the vicinity of Gallup.

It is testified by one Kealar, who operates a drilling outfit, that in the early part of March, 1912, he sank a drill hole at a point said to be a little north and west of the center of the SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ ; that after passing through several small seams of coal near the surface he encountered 10 or 12 inches of coal, as near as he could tell, at a depth of 176 feet; that underneath this was  $4\frac{1}{2}$  feet of clay; that in the last run the drill made in passing through the clay there was a little coal in the washings from the hole; that the rope was then marked at the platform and the tools replaced in the well, when a run of 2 feet was made, and that the material washed from this 2 feet was nothing but coal; that another run of 1 foot was made, the washings from which showed about equal percentages of coal and clay, indicating that the drill had passed through the coal stratum. The witness testified that he is not a coal expert and that his previous experience in drilling for coal was very limited. The claimant himself testified that he was at the drill hole when Kealar took out the material; that he does not claim to be an expert, but should judge the material was coal. Referring to Kealar's testimony as to the result of said drilling, witness Gillett testifies that without doubt there are coal veins that show in the draw south of Gallup, which he measured, about eighteen months ago, in connection with other investigations, and that one of these showed about 10 inches of clean coal, and some 10 or 14 inches of black shale or coal shale. Another shows 6 or 8 inches of clean coal, with very little coal shale in connection with it, and that these beds would be about the proper horizon at the point where the drill hole was sunk for the beds disclosed therein to lie. He testified further that punch drilling of coal veins is not accurate; that a coal seam will ravel with a punch drill, and that one can not tell with any degree of accuracy if a seam is 2 feet or 12 inches or less in thickness at a depth under the surface of 175 feet; that the

only accurate way to drill for coal to expose its true thickness is with a double barreled diamond drill; that the drill hole referred to did not indicate that there was workable coal in the southeast forty for the reason that a punched drill is liable to give indications of a greater thickness of coal than is actually present. The Department is of opinion that the evidence as to the result of this drilling does not tend to show that beds disclosed thereby are workable or that the land was known on June 21, 1898, to possess any value on account thereof.

Coal miners and coal operators living in the vicinity of the land at or prior to the date of the grant, give it as their opinion that the land was known as of that date to be coal in character, but aside from the openings and exposures hereinabove referred to they base their opinion on the fact that it was underlain by the red sandstone, and, hence, within the horizon of the lower coal group of the Mesa Verde formation, and therefore should be underlain by the Otero and Talbot beds. Several of them, however, concede that it would be necessary to drill or otherwise explore the land for the purpose of determining whether such beds, if found on the land, contained coal of workable thickness and quality. The witnesses for the protestants, however, express the opinion that the coal disclosed on the land is too thin to be commercially operated.

The regulations for the classification and valuation of public coal lands, approved by the Department February 20, 1913, provide that land shall be classified as coal land if it contains coal having—

A thickness of or equivalent to 14 inches for coals having a heat value of 12,000 B. t. u. or more, increasing 1 inch for a decrease from 12,000 to 11,000 B. t. u., 1 inch for a decrease from 11,000 to 10,500 B. t. u., 1 inch for each decrease of 250 B. t. u. from 10,500 to 10,000, and 1 inch for each decrease of 100 B. t. u. below 10,000.

With reference to what are known as split beds of coal—that is to say, beds containing two or more benches of coal separated by bands or partings—the United States Geological Survey, the recommendations of which are accepted by the land department in the classification and valuation of coal land, says:

The general practice of the United States Geological Survey in classifying coals has been to give a split bed the value of an unbroken bed with which it can fairly be compared. It is evident that a solid 3-foot bed is worth more than two 18-inch benches separated by 6 inches of clay or shale. After careful study the Survey adopted the simple expedient of prescribing that any parting or bench of bone or impure coal included in a bed injured the value of the coal of the bed in amount equal to the thickness of the parting. Thus the split bed just cited, with its 6-inch parting, is regarded as equivalent to a solid bed 30 inches thick (36 inches of coal minus 6 inches of parting equals 30 inches). If the benches on either side of the parting are not of the same thickness the thickness of the parting is deducted from the thickness of the thinner bench.

It is not necessary to consider the whole thickness of a coal bed. It is the practice of the Survey to start with the best bench, if in itself not of workable thickness, and to add the thickness of the next bench above or below after deducting the thickness of the intermediate parting. If the whole bed thus included is still not of workable thickness and more benches exist above or below, the thickness of these benches is added, after subtracting the thickness of the parting between them and the principal bench. If a parting is thicker than the thinner adjoining coal bench, that bench is considered as having no value.

Applying the rule thus stated to the three beds that outcrop in the E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , it is obvious that none of them contain coal of a thickness of or equivalent to the minimum thickness of fourteen inches prescribed by the Coal Classification Regulations. Bed No. 2, according to the measurements of Gillett, contains a total of 19 inches of coal, consisting of two benches, one 8 and the other 11 inches thick, separated by an eight-inch band of shale, which would reduce the total thickness of coal to an equivalent of about 11 inches. Comment on what is designated as the No. 3 bed is unnecessary, as it is not claimed by applicant or any of his witnesses that this bed possesses any value for coal mining purposes. The bed designated as No. 4 bed contains, according to the measurements of Gillett, and their correctness is not disputed, two benches of clean coal, one 5 and the other 8 inches in thickness, separated by a band of shale one foot in thickness. This according to the rule adopted by the Geological Survey would be the equivalent of about eight inches of coal. The presence, therefore, of none of these beds upon the land would warrant its classification, or for the same reason its adjudication by the Department, as coal land. The Department is also of opinion that the testimony of the claimant's witnesses to the effect that the land should be underlain by other beds of workable thickness is too general and indefinite to support a finding that the E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  was known at the date of the grant to the Territory of New Mexico, to be valuable for coal.

As to the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , the evidence, in the opinion of the Department, fully warrants the conclusion of the local officers and the Commissioner that the land is coal in character and was known to be such at the date of the grant.

The decision of the Commissioner, therefore, in so far as it finds the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  to have been known to be coal in character at the date of the grant, and the SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  to have been non-coal as of that date, is affirmed. The finding, however, that the NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  was known to be coal in character at the date of the grant is reversed. The application will accordingly be rejected as to the E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ ; as to the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , it will remain intact.

## STATE OF CALIFORNIA ET AL.

*Decided October 7, 1915.*

## SCHOOL INDEMNITY SELECTION—ELIMINATION OF BASE FROM NATIONAL FOREST.

Where land within a national forest offered as base for a school indemnity selection is prior to approval of the selection eliminated from the forest the State is not entitled to have the selection consummated but takes title to the base land under the grant.

JONES, *First Assistant Secretary*:

May 1, 1906, the State of California filed indemnity school land selection State No. 6627, R. & R. No. 1441, now serial 026555, Los Angeles, for the SE.  $\frac{1}{4}$ , Sec. 15, T. 4 N., R. 20 W., S. B. M., offering as base the SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SE  $\frac{1}{4}$ , Sec. 16, T. 9 N., R. 26 W., S. B. M., all in Los Angeles, California, land district.

Such base tracts were when the selection was made within the exterior boundaries of the Santa Barbara National Forest, but were together with the balance of the section eliminated therefrom by proclamation dated June 15, 1914 (No. 1269), and such being the fact said selection was held for cancellation by the decision of the Commissioner of the General Land Office of May 3, 1915, because—

There no longer exists any grounds upon which the change proposed by the making of the selection can be consummated, nor does any reason appear why the State should not retain the title to the base lands in place.

From this decision the State and Sprague, intervener and purchaser from the State, have appealed to the Department, contending that the elimination of the base land from the National Forest subsequent to the date of the selection cannot prevent the consummation of such selection.

This contention cannot be sustained. No right is acquired by said selection prior to approval thereof by the proper officer of the United States as will prevent a change in the status of either the selected land or the proffered base, thus defeating such selection and rendering its cancellation necessary. See administrative ruling of July 15, 1914 (43 L. D., 293).

The decision appealed from is affirmed.

## FRED C. AND GEORGE D. WEEKES.

*Decided October 21, 1915.*

## RESERVOIR FOR WATERING LIVESTOCK—RESERVATION IN FAVOR OF STATE.

Reservoirs for the watering of livestock under the act of January 13, 1897, may be located only "upon unoccupied public lands of the United States, not mineral or otherwise reserved;" and the land department is without power to allow or approve filings or maps for reservoir claims under that act initiated and asserted in the face of a withdrawal and reservation in favor of the State under the act of August 18, 1894.

## RESERVOIR FOR LIVESTOCK—CONSTRUCTION AND USE—DECLARATORY STATEMENT.

No such right is acquired by the construction and use of a reservoir for watering livestock, in the absence of a declaratory statement as required by the act of January 13, 1897, as will except the land from the operation of a withdrawal for the benefit of the State under the act of August 18, 1894.

JONES, *First Assistant Secretary*.

Fred C. and George D. Weekes, doing business as "Weekes Brothers," have appealed from the Commissioner's decision of May 14, 1915, holding for cancellation their reservoir declaratory statement 026712, filed February 10, 1915, and allowed by the register on the following day, pursuant to the provisions of the act of January 13, 1897 (29 Stat., 484). The applicants are stock raisers and applied for the reservation of the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 3, T. 1 S., R. 8 E., G. & S. R. M., Phoenix, Arizona, land district, for the construction and use of a reservoir for the furnishing of water for live stock. The land is unsurveyed. All lands in said township were withdrawn and reserved on and after September 26, 1914, and until sixty days after the filing of the plat of survey, under the act of June 20, 1910 (36 Stat., 557, 575), which extended to the State of Arizona certain provisions contained in the act of August 18, 1894 (28 Stat., 372, 394). The Commissioner's decision states that the lands—

were withdrawn and reserved on and after June 20, 1913, for sixty days after filing the plat of survey, by letter "E" of this office, dated June 27, 1913.

Such withdrawal, however, appears to have been ineffectual, according to the records of the General Land Office, because of failure in regard to publication of notice by the State, and the withdrawal of September 26, 1914, is the only one that became effective with respect to this land.

Said act of August 18, 1894, provides that the lands covered by the State's application for survey—

shall be reserved upon the filing of the application for survey from any adverse appropriation by settlement or otherwise except under rights that may be found to exist of prior inception, for a period to extend from such application for survey until the expiration of sixty days from the date of the filing of the township plat of survey in the proper district land office, during which period of sixty days the State may select any of said lands not embraced in any valid adverse claim, for the satisfaction of such grants.

The act further provides for the giving of notice by the State by publication notifying all parties interested of such application—

and the exclusive right of selection by the State for the aforesaid period of sixty days as herein provided for; and after the expiration of such period of sixty days any lands which may remain unselected by the State and not otherwise appropriated according to law shall be subject to disposal under general laws as other public lands.

It will be noted that the only rights or claims expressly excepted from the operation of the withdrawal are those existing rights which

had their inception prior to the State's application. The lands are withdrawn and reserved from any adverse appropriation with "the exclusive right of selection" in the State for the period of sixty days.

The act of January 13, 1897, providing for the location of reservoir sites, grants the privilege for the construction of a reservoir for furnishing water to live stock, and the controlling of the same and the land upon which it is located, with the express provision that the same shall be "upon unoccupied public lands of the United States, not mineral or otherwise reserved." Under these laws the officers of the land department are not empowered or authorized to grant recognition to or approve any reservoir claim or right initiated and asserted in the face of a withdrawal and reservation in favor of the State.

Counsel for the applicants contends that the holding of the declaratory statement for cancellation by the Commissioner was erroneous and that the same should have been allowed subject to any rights that the State might have, and further that the State should have been served with notice to show cause why the filing should not be allowed. It may be conceded that the act contemplates and the regulations (paragraph 36, 36 L. D., 576, 579) expressly provide for the filing of a declaratory statement where the reservoir is located on unsurveyed lands. But for obvious administrative reasons and because of the provisions of the statutes above pointed out, this Department cannot allow or approve filings or maps for reservoir claims initiated upon withdrawn and reserved areas. The exclusive right of the State to make selection after survey could not be impaired or defeated by calling upon the State to show cause why the filing should not be allowed.

In the appeal the following statements are found:

The land and water comprising the reservoir declaratory statement had been used by Weekes Brothers long prior to the withdrawal of the lands for the use of the State . . . .

In case this appeal is not sustained by the Secretary we ask that a hearing be allowed to show the occupation of the land by Weekes Brothers for reservoir site.

The above statements are not clear. If counsel, as is possible, intended to assert the construction and user of a stock reservoir prior to the withdrawal, such action was without the sanction of a proper declaratory statement. Section 2 of the act of January 13, 1897, prescribes that any person desiring to avail himself of the act "shall file a declaratory statement." Section 3 of the act in part reads as follows:

That at any time after the completion of such reservoir or reservoirs which . . . . shall be constructed and completed within two years after filing such

declaratory statement, such person, . . . shall have the same accurately surveyed, . . . and shall file . . . a map or plat showing the location of such reservoir, which map or plat shall be transmitted . . . to the Secretary of the Interior and approved by him, and thereafter such land shall be reserved from sale by the Secretary of the Interior so long as such reservoir is kept in repair and water kept therein.

A mere declaratory statement, being only a declaration of intention, has never been treated as a segregation or appropriation of the land. If followed up in due time by compliance with the law and proper proof thereof, the claimant's rights are by relation held to date back to the time of filing so far as other junior claims are concerned. Only by proper filing prior to the withdrawal created by virtue of the State's application followed by due compliance with law could any claim or rights "be found to exist of prior inception" under said act of August 18, 1894, which would be excepted from the operation of such withdrawal.

Conceding, therefore, the prior construction and use of a reservoir, without a filing therefor, no rights accrued which were excepted from the withdrawal in favor of the State, and such claim of the applicants has no standing and is entitled to no recognition.

The reservoir declaratory statement was improperly received and erroneously allowed and must be rejected. The judgment of the Commissioner is affirmed.

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### SIMILKAMEEN POWER CO. ET AL.

*Decided October 18, 1915.*

#### RIGHT OF WAY—POWER PURPOSES—PRIORITY.

Paragraph 3 of the regulations of March 1, 1913, providing that priority of applications for power permits under the act of February 15, 1901, shall depend upon the order of filing complete applications, relates only to priority between rival applicants for permission to investigate and utilize public lands for the construction of power plants, and has no application to cases where actual development has already occurred.

#### SWEENEY, *Assistant Secretary*:

The Department has before it the applications of the Similkameen and Okanogan Valley Power Companies for preliminary permits to utilize and develop water-power sites upon the Similkameen River, under the provisions of the act of February 15, 1901 (31 Stat., 790), and the petition of the West Okanogan Valley Irrigation District that permission be not accorded to either of the power companies but that the district be given an opportunity to develop power in connection with its irrigation project.

In order to secure facts with respect to the rights, interests, and equities of the several parties, and to aid it in determining the action

which should be taken in the public interest, the Department, on July 24, 1914, ordered a hearing, which was had October 7, 1914, and has been aided in consideration of the record before it by briefs of counsel representing the several applicants. An oral hearing was also had in this office, at which arguments were presented by the representatives of the Similkameen Company and the irrigation district, the Okanogan Valley Power Company not being represented.

Substantially, the facts in the case are as follows: In August, 1902, one Hagerty located and filed notice of his intention to utilize the waters of the Similkameen River for the development of power, and in the following November the Similkameen Power Company was organized and proceeded in the following spring with surveys and work preliminary to the erection of a power plant. Work was thereafter prosecuted until the plant was completed and put in operation, in November, 1906. The power developed and disposed of has not equaled the maximum capacity of the plant, for the apparent reason that up to the present, at least, the country was in a comparatively undeveloped condition and but limited amounts of power were required. It is testified that power installations have been made by the company in eight different mines which used same for from one to six months and then failed and that at various times power has been furnished to other mines. The present disposition and output, made over about 26 miles of transmission line, is approximately 110 horsepower for irrigation, the furnishing of power to the town of Oroville for light and for the pumping of a domestic water supply; the furnishing of a limited amount of power for lighting at the town of Nighthawk, and the furnishing of power to the Ivanhoe mine, at Palmer Lake. The capacity of the present plant is about 250 or 260 horsepower, while the amount of power actually generated and disposed of is considerably less. With additional development and installations, which it is testified would cost in the neighborhood of \$39,000 or \$40,000, it is stated that about 975 horsepower can be developed; with a larger and more expensive plant and an additional point of discharge, it is stated that from 2,500 to 3,000 horsepower might be developed, though it would seem, taking into consideration the low-water flow of the river and the needs for irrigation, that storage would be necessary for the maximum development. The minimum flow of the river is approximately 405 second-feet, while at times the maximum flow, and this usually during the irrigation season, amounts to from 8,000 to 11,000 second-feet.

The plant completed by the Similkameen Company in 1906 is said to have cost about \$130,000, this cost being due, in part, to the fact that at time of construction it was remote from railroads and other means of transportation, involving additional costs.

The company at the time of original development and construction relied for title upon certain lode and placer mining locations, applications for which were finally rejected by the Land Office, on the ground that the land in question is not mineral in character. The company then undertook to acquire title to the land involved through the filing of selection under the act of June 4, 1897 (30 Stat., 36). This application was rejected by departmental decision of September 30, 1913, on the ground that the land in question had prior thereto been included in power-site withdrawal No. 179, under authority of the act of June 25, 1910 (36 Stat., 847). It was further pointed out in said decision that the law applicable to such use of public lands as was contemplated by the company was that of February 15, 1901, *supra*. The departmental decision concluded as follows:

Should this decision become final, an application by the power company for the development of the power possibilities at this point, presented under and in accordance with the act of February 15, 1901, *supra*, and the regulations thereunder approved March 1, 1913, will receive consideration if presented.

This decision under the Rules of Practice did not become final for thirty days from notice thereof, and in the meantime, on October 24, 1913, the attorney for the Similkameen Company advised the Department, in writing, that the company was engaged in preparing data preliminary to the submission of an application under the act of February 15, 1901. November 6, 1913, the attorney was advised that the application when received would be given due consideration. November 15, 1913, the company filed its complete application for preliminary power permit under the said act of February 15, 1901, and in this connection it may be stated that it appears from the testimony submitted at the hearing that the surveys upon which said application is based were begun October 24, 1913. In the meantime, on October 13, 1913, the Okanogan Valley Power Company filed its application for preliminary power permit to develop substantially the same site. Its plans involved a somewhat more extensive development than that heretofore undertaken by the Similkameen Company, and while there is testimony to the effect that it would be possible for the Okanogan Power Company to make a development of power without interfering with the present plan of the Similkameen Company, it is clear that it is not feasible, practicable, or advisable to have two or more attempted developments of the power at this point upon the Similkameen River.

The surveys upon which the application of the Okanogan Power Company is based were initiated August 30, 1913. The East and West Okanogan Valley Irrigation Districts presented an application to develop power upon the Similkameen River, but upon further consideration of the matter determined to confine themselves to the work

of irrigation and advised the Department in April, 1914, of their change of plan. Accordingly, by decision of July 24, 1914, the Department rejected their application. Subsequently, however, the West Okanogan Irrigation District, successor of the districts first named, further considered the matter, and advised the Department that it would like to be afforded an opportunity to develop the power possibilities of this location in connection with its work of irrigating arid lands. It may be here stated that there is no conflict between the claims of the irrigation district and the two power companies with respect to the water used by the former for irrigation, it being so expressly stipulated at the hearing.

As already indicated, it might be possible to make a development of the power at this point in the Similkameen River through two plants, *i. e.*, the existing small plant of the Similkameen Company and an additional plant such as that tentatively suggested by the Okanogan Power Company. However, it is generally conceded, and this Department is convinced, that this sort of development would not be feasible from the standpoint of commercial enterprise; nor would it be conducive to the best interests of the locality. One plant making the maximum development necessary for supplying the vicinity with power would be more economical and would secure in the most business-like way the logical and full development of the power possibilities; while to divide the possibilities among two or more companies or individuals would increase expense of construction and operation and incidentally the charges to consumers, and would not, in the opinion of this Department, be a proper or advisable disposition of the site in question. In this connection it should be borne in mind that the matter of rates and service of such corporations is controlled by the Public Service Commission of the State of Washington.

The only existing plant upon this portion of the river is that of the Similkameen Company. The Okanogan Valley Power Company has a power plant generating about 500 horsepower on the Methow River, and is supplying power for irrigation, also for lighting, to the towns of Omak, Pateros, Brewster, and Okanogan. It has made no construction upon or in the vicinity of the Similkameen and made no expenditures except in the matter of preliminary surveys. The West Okanogan Irrigation District has constructed gravity canals for the irrigation of approximately 10,000 acres of land in the Okanogan Valley, but has installed no works, and so far as shown by the record, expended no money in connection with electrical development upon the Similkameen River.

While the plant of the Similkameen Power Company was constructed upon public lands to which the company was unable to

secure title by the methods at first adopted, it is nevertheless true that a large expenditure of money was made in good faith in the construction of the plant and that for the past nine years the company has been supplying the mines and irrigators of the vicinity, as well as the towns of Oroville and Nighthawk, with such power and light as was required. While the maximum output of the existing plant has not been maintained, it was due, at least until recently, to a lack of demand. In this particular, therefore, the equities of the Similkameen Company are superior to those of the Okanogan Power Company and the irrigation district, which have made no development and have expended no money in construction. Furthermore, it is believed by the Department that the Similkameen Company is prior in time and right to the other applicants, although the Okanogan Company was prior in time with respect to initiation of surveys and the filing of the applications for power permits now before the Department.

The regulations of March 1, 1913 (41 L. D., 532, 536), paragraph 3, provide that priority of application shall be based upon the order of filing complete applications. This regulation, as is evident from its language, contemplated only the determination of priorities between rival applicants for permission to investigate and utilize public lands for the construction of power plants, and did not undertake to make disposition of cases where actual development had already occurred.

However, in this case, as already related, the Similkameen Company had a constructed and operating plant, and had, by departmental decision of September 30, 1913, been accorded the right to present application for the site under the act of February 15, 1901. This suggestion was promptly accepted and acted upon by the company, which, on October 24, 1913, prior to the final rejection of its scrip application, advised the Department of its intention to file an application for a power permit, stating that it was then engaged in preparing data preliminary to the application.

The act of February 15, 1901, *supra*, authorizes the Secretary of the Interior to permit the use of public lands for generation and distribution of electrical power. With this act before it, and upon full consideration of the equities of the Similkameen Company, the Department invited the filing by that company of an application for permit and the company was diligent in prosecuting preliminary investigations and surveys and in filing its application for permit. The Okanogan Power Company did not file its application until after the action described, has no equities, and does not occupy any legal status entitling it to be preferred over the Similkameen Company. The irrigation district's primary purpose is the reclamation

of arid lands, and this, in a large measure, at least, is accomplished by the gravity canals already constructed. The development and distribution of power by the district would aid irrigation only so far as applied to the pumping of water to lands above the gravity canal, and this same result may be attained with power developed by the Similkameen Company at its present plant. Any power over and above that needed for irrigation would be utilized by the towns and cities of the vicinity and development of nearby mines, a use of power rather inconsistent with the essential purpose of an irrigation district, though it is claimed that under a recent act of the Washington State legislature irrigation districts are authorized to engage in power development. It is noted, however, that they are not authorized to dispose of any power outside the limits of the district—until all demands and requirements for water and power for use in said district are furnished and supplied by said district.

Be that as it may, the Similkameen Company is prior both in time of occupation and application to the district, and has superior equities by reason of its expenditures and development. The Similkameen Company expresses the intention of developing the site to its low-water capacity of approximately 975 horsepower, and at such an early date as to not only supply all needs of the vicinity, but to anticipate future demands.

Accordingly, after a very careful review of the entire record, and consideration of the able arguments presented by counsel for the respective applicants, the Department has reached the conclusion that the Similkameen Power Company is prior in time and right and superior in equities to the other applicants, and should be granted the desired permit. It is so ordered, and the applications of the Okanogan Valley Power Company and the West Okanogan Irrigation District are hereby rejected. Should this decision become final, an appropriate power permit to the Similkameen Company, under the act of February 15, 1901, will be prepared, with such provisions as are designed to secure the public interest, and that company will be afforded an opportunity to develop the power possibilities of this locality.

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### GAMMILL v. THOMPSON.

*Decided October 22, 1915.*

#### DESERT LAND ENTRY—SEC. 5, ACT OF MARCH 4, 1915.

Section 5 of the act of March 4, 1915, providing for the relief of desert land entrymen, is applicable to entries otherwise within its terms notwithstanding the time within which final proof might be submitted thereon had expired at the date of the passage of the act.

## DESERT LAND ENTRY—CONTEST—SEC. 5, ACT OF MARCH 4, 1915.

No such adverse right was acquired by an affidavit of contest against a desert land entry, filed after the expiration of the period within which final proof might have been submitted, and upon which no action was taken by the land department, as will bar relief of the entryman under the act of March 4, 1915.

JONES, *First Assistant Secretary*:

November 7, 1904, Fred A. Thompson made desert land entry No. 466, at Glenwood Springs, Colorado, which, as amended, embraced the E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 13, E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 24, T. 8 N., R. 89 W., 6th P. M. On and prior to October 4, 1910, he submitted five annual proofs, alleging a total expenditure of \$2,090. The time for making the final proof was extended at various times to November 7, 1914. Expiration notice was issued and served by the register and receiver November 20, 1914, no action being reported by them to the Commissioner March 3, 1915.

March 13, 1915, Alexander H. Gammill filed an application to contest the entry, charging that Thompson had never secured any water looking to the reclamation of the land; and also that for more than five years he had not cultivated nor improved it. The register and receiver transmitted this contest affidavit without action to the Commissioner, citing in that connection the case of *Meyer v. Mitchell* (9 L. D., 287).

By letter of March 20, 1915, to the register and receiver, the entryman requested that he be afforded relief under paragraph 5 of the act of March 4, 1915 (38 Stat., 1138). Upon May 22, 1915, the Commissioner held that Gammill's contest should be dismissed, and the entryman be allowed 60 days to file his application for relief under the act above cited. Formal application was filed by the entryman May 25, 1915, alleging a total expenditure upon the land of the sum of \$1845. The contestant has appealed from the Commissioner's decision.

The act of March 4, 1915, *supra*, provides in section 5, with reference to any lawful pending desert land entry made prior to July 1, 1914, that an entryman who has expended the sum of \$3 per acre, in good faith, in an attempt to effect reclamation of the land, and there is no reasonable prospect of his being able to secure water sufficient to effect reclamation, may, upon filing election to do so, pay to the receiver of the land office the sum of fifty cents per acre, and thereafter perfect such entry, upon proof that he has upon the tract permanent improvements conducive to its agricultural development of the value of not less than \$1.25 per acre, and that he has, in good faith, used the land for agricultural purposes for three years, and upon the payment of a further sum of 75 cents per acre.

The appellant contends that the present entry is not within the act of March 4, 1915, because the entryman was in default for final proof and at the time of its passage expiration notice had issued and he had failed to reply thereto. The entry was a lawful entry when made, and was still pending; the Commissioner had taken no action looking towards its cancellation, and it was within the power of Congress to pass legislation so as to permit of the acquisition of title by the entryman, notwithstanding that the time for final proof had expired.

The appellant further contends that this entry cannot be ratified, or confirmed, because of the contest affidavit filed by Gammill, who, it is contended, is an adverse claimant—citing in that connection the case of *Lee v. Alderson* (11 L. D., 58).

As above stated, the register and receiver took no action upon the contest affidavit. In the case of *Meyer v. Mitchell*, *supra*, it was held that where the statutory life of an entry has expired and final proof has not been made, it is within the discretion of the Commissioner to either allow a contest against the entry, or call upon the entryman to show cause why the entry should not be canceled for failure to submit proof. Here no notice was ever issued upon the contest affidavit, nor hearing held. In the case of *Lee v. Alderson*, a desert land entryman was in default for final proof when a contest affidavit was filed; hearing was ordered upon this contest affidavit, and judgment rendered upon the record so made. It was there held that this contest was an adverse claim which would prevent the submission of the case to the Board of Equitable Adjudication. The holding in the case of *Lee v. Alderson*, however, has been modified by the case of *McCraney v. Heirs of Hayes* (33 L. D., 21), which held that no such right is acquired by contest by one having no claim to the lands, and who is seeking simply to secure a preference right prior to the cancellation of the entry as will prevent the acceptance of final proof on such entry, even though not submitted until after the expiration of the statutory period, and the submission of the case to the Board of Equitable Adjudication for appropriate action.

Further, in the present case, no action was taken upon the contest affidavit, and in the meantime the act of March 4, 1915, was passed for the relief of the character of desert-land entrymen therein described. The act of March 4, 1915, being remedial legislation, should receive a liberal construction.

With the appeal there is filed a protest, signed by counsel for the contestant, against the allowance of Thompson's application, under the act of March 4, 1915. In this protest it is stated that the sum of \$3 per acre has not been expended in good faith in an attempt to effect reclamation of the land entered, reference being had to certain

supporting affidavits. A consideration of these affidavits, however, discloses that they contain no allegations as to the alleged failure of the entryman to expend the required sum of \$3 per acre; nor in any way traverse the annual proofs, nor the statement contained in the entryman's application filed May 25, 1915.

The affidavit of Gammill, filed with the protest, further alleges that he applied to enter certain of the lands under the homestead laws, which application was rejected by the register and receiver February 17, 1915, because of the existence of Thompson's entry. He further alleges that upon April 2, 1915, he removed his family on to the land; has built a house, ditches, fences and corral, and has 19 acres in cultivation. His establishment of residence and improvement upon the tract embraced in the pending entry would give him no rights as against the entryman.

The decision of the Commissioner is correct, and is accordingly affirmed.

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**EFFIE A. HARD.**

*Decided October 23, 1915.*

**COAL LAND—PRICE—PROXIMITY OF RAILROAD.**

Where at the time of application to purchase, payment, and entry of a tract of coal land there was a completed railroad within fifteen miles thereof, the applicant is required, under section 2347, Revised Statutes, to make payment at the rate of not less than twenty dollars per acre, notwithstanding at the time of the initiation of applicant's claim to the land by the opening of a mine thereon, there was no completed railroad within fifteen miles thereof, and the applicant could not, on account of the land being unsurveyed, make entry until after the completion of the railroad.

*JONES, First Assistant Secretary:*

This is an appeal by Effie A. Hard from the decision of the Commissioner of the General Land Office of November 16, 1914, requiring her to make payment at the rate of \$10 per acre in addition to a previous payment at the same rate, made by her in connection with her coal land entry 05030, for the SE.  $\frac{1}{4}$ , Sec. 10, T. 13 N., R. 4 E., W. M., Vancouver land district, Washington.

It appears that the plat of survey of the township in which the area is situated was filed in the local office December 21, 1912. At that time the tract was included in executive coal land withdrawal No. 1, State of Washington, issued July 7, 1910, which ratified and confirmed a prior departmental withdrawal of December 17, 1906, embracing the land. The executive withdrawal remained effective until December 2, 1913, when it was revoked.

PROPERTY OF THE  
GENERAL LAND OFFICE.

Pending the withdrawal and on January 31, 1913, Hard filed coal declaratory statement for the tract, alleging possession thereof about February 15, 1904, and the opening and improving of a mine of coal thereon October 25, 1907. This filing, however, was rejected by the Commissioner's decision of April 24, 1913, for the reason that in view of the withdrawal the land was not subject to such filing.

After further proceedings not necessary to be here recited, the claimant on December 19, 1913, the withdrawal as to the tract having then been revoked, filed application to purchase the tract, alleging the performance of certain work on the claim at a cost of \$700, with a view to the opening and improving of a mine of coal thereon, which work, it was alleged, was commenced in 1902, and continued during various years down to and including 1913, and which, it was further alleged, resulted in the opening and improving of two mines of coal on the tract. January 30, 1914, Hard filed in the local office proof of the publication and posting of notice of her application for the period prescribed by the coal land regulations. February 11, 1914, she filed in the local office an affidavit as to the distance of the tract from a completed railroad. This affidavit was made out on the usual form but was amended so as to aver that no portion of the land was wholly or in greater part within fifteen miles of a completed railroad "on Feb. 28, 1902, when I first initiated my claim to said land and opened at coal mine thereon." Payment for the land was made in the sum of \$1,600, or at the rate of \$10 per acre, and on March 31, 1914, final certificate of entry issued.

Upon consideration of the entry the Commissioner in the decision here appealed from found that at the date of the entry the land was undoubtedly within less than fifteen miles of a completed railroad, and for this reason and in view of the provisions of section 2347, Revised Statutes, required the claimant, as above stated, to make an additional payment of \$10 per acre, under penalty on default of suffering the cancellation of the entry.

The claimant does not question the correctness of the Commissioner's finding that at the date of the entry the land was within fifteen miles of a completed railroad. Indeed, there would seem to be no ground for controversy in that regard, it appearing from a map of the State of Washington, compiled by the General Land Office from the official records of that office and from other sources, that as early as 1909, the year the map was issued, a railroad had been projected to a point within less than fifteen miles of the land. The claimant contends, however, that inasmuch as she has shown that there was no completed railroad within fifteen miles of the land at the time, as she asserts, she initiated a claim to the tract by the opening and improving of a mine thereon, and within due time

after the land became subject to entry filed application to purchase the same, submitted proof and made payment, she should be held to be within the terms of paragraph 18 of the coal land regulations as amended December 30, 1912 (41 L. D., 417), her claim having been asserted under section 2348, Revised Statutes. She further urges that, the land having been unsurveyed at the time she initiated her claim thereto by opening and improving a mine thereon while it was more than fifteen miles from a completed railway, and that she having no control over the public-land surveys but being forced to await the extension of such survey over the land by the land department, the law and the departmental regulations thereunder should be liberally construed in her favor and that she should be accorded the right to purchase at the price at which the land would have been subject to disposition if then surveyed at the time her claim was initiated. To support these contentions she cites Carthage Fuel Company (41 L. D., 21), and Brown Bear Coal Association (42 L. D., 320), insisting that these decisions declare the rule to be that in cases coming under the preference right provisions of section 2348, Revised Statutes, it is the right of a claimant to make payment for the land in accordance with the conditions existing at the time of the initiation of the claim rather than with respect to conditions prevailing at the date of entry.

By section 2347, Revised Statutes, it is provided that—

Every person . . . shall upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands . . . upon payment to the receiver of not less than ten dollars per acre for such lands where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

The said amended paragraph 18 of the coal land regulations so far as pertinent to the disposition of this case reads as follows:

Applicants to purchase under section 2347 of the Revised Statutes may at their option pay for the land at the time of filing their applications to purchase, or at any time thereafter, up to fifteen days from and after receipt of notice from the register and receiver, as hereinbefore provided. The price to be paid will be that existent at date of actual payment of the purchase money by the applicants to the register and receiver, and a subsequent increase in the price will not affect their right to complete the applications, if proceedings be diligently prosecuted to final proof and entry. Where payments are not made at time of filing applications to purchase, but are deferred to a later date, and an increase in valuation has occurred subsequent to application to purchase, but before the actual tender and payment of the purchase money, the applicants will in all such cases be required to pay the new or higher price.

The foregoing is not applicable to coal-land claimants who have initiated claims under section 2348 of the Revised Statutes by the opening and improving of a mine of coal on public land and who have diligently prosecuted their

claims to completion as required by the law and regulations. Such claimants will be required to pay the price fixed and existent at the time of the initiation of their claims.

While the language used in this paragraph is somewhat broad and standing by itself might seem to support the claimant's views, it was nevertheless intended by the Department to apply only to coal lands whose price between the date of the filing of an application therefor or the initiation of a claim thereto, and the time of the completion of the proceedings, had been increased by departmental appraisal or reappraisal. This is in a measure shown by departmental letter of December 30, 1912 (41 L. D., 416), which transmits said paragraph as amended to the Commissioner and directs its promulgation. Not only was the paragraph not intended to apply to a case like the one at bar, where between the date of the alleged initiation of the claim and the date of application and payment for the land a railroad had been constructed to a point within fifteen miles of the land, thus automatically, under the express provisions of section 2347, increasing its minimum price from \$10 to \$20 per acre, but the Department obviously would have had no authority to so apply it, the provisions of the law in that regard being mandatory—binding upon the Department as well as claimants—and admitting of no waiver.

Neither of the decisions cited by the claimant and relied upon by her to support her contentions has any bearing upon the question here presented. The Carthage Fuel Company case presented for determination the question as to whether the company should pay for a certain area at the rate of \$25 per acre, at which it had been appraised at the date of the initiation of the company's claim, or from \$50 to \$65 per acre, its appraised value at the time the application to purchase was filed, the distance of the tracts from a completed railroad at the respective dates of the initiation of the claim and the filing of the application not being involved; while in the case of the Brown Bear Coal Association it appeared that no railroad was constructed to a point within fifteen miles of the land until after not only the initiation of the claim thereto by the opening and improving of a mine thereon, but the filing of application, submission of proof, and making of payment for the land.

The application to purchase filed by the claimant to the tract here in question and payment therefor having been made more than three years after the construction and completion of a railroad to a point within fifteen miles of the land, it must be held under the provisions of said section 2347, the claimant is required to make payment therefor at the rate of not less than \$20 per acre.

The decision appealed from is accordingly affirmed.

## WILLIAM E. MOSES.

*Decided October 25, 1915.*

## COAL LAND WITHDRAWAL—ACT OF JUNE 22, 1910—SOLDIERS ADDITIONAL.

Lands withdrawn under the act of June 25, 1910, for examination and classification as to coal values, subject to the provisions, limitations, exceptions, and conditions contained in the act of June 22, 1910, are not subject to soldiers' additional locations under sections 2306 and 2307, Revised Statutes, even though such locations be filed with a view to obtaining title to the land with a reservation of the coal therein to the United States; and the land department is without authority to receive an application to locate, enter, or select land withdrawn for classification and not yet classified; and hold the same suspended pending the result of a hearing upon the request of the applicant to determine the character of the land with reference to its coal value.

*JONES, First Assistant Secretary:*

This is an appeal by William E. Moses, claiming as the assignee of the heirs of James J. Johnson, from the decision of the Commissioner of the General Land Office of May 25, 1915, holding for rejection his application 020123 to enter under the provisions of sections 2306 and 2307, Revised Statutes, lot 2, Sec. 5, T. 15 S., R. 62 W., 6th P. M., Pueblo land district, Colorado, for the reason that the land was not at the date of the application open to disposition under said sections, because at that time, as well as at all times thereafter, it was covered by an Executive order of withdrawal for coal classification purposes.

The appeal does not challenge the correctness of the Commissioner's action, but asks merely that the land applied for be eliminated from the withdrawal and that on the basis of certain affidavits which accompany the appeal the Geological Survey be called upon for a report as to the tract, "so that if it be not coal land, this application may be allowed." The application was presented March 11, 1915. Prior to that time, however, the area was by Executive order of December 16, 1911, withdrawn from settlement, location, sale, or entry, and reserved for examination and classification with respect to coal values, subject to the provisions, limitations, exceptions, and conditions contained in the act of June 25, 1910 (36 Stat., 847), and the act of June 22, 1910 (36 Stat., 583), and said withdrawal was at the date of the application and still is in full force and effect.

The said act of June 25, 1910, as amended by the act of August 24, 1912 (37 Stat., 497), provides that lands withdrawn thereunder shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals; makes provision for the protection of the rights of *bona fide* occupants and claimants of oil and

gas lands included within the limits of the area so withdrawn; excepts from the force and effect of such withdrawals all lands which are at the date thereof embraced in any lawful homestead entry or desert-land entry theretofore made, or upon which any valid settlement claim has been made, and is at said date being maintained and perfected pursuant to law. The act of June 22, 1910, *supra*, subject to whose provisions the withdrawal of 1911 was also made, provides that all public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands and are valuable for coal, shall be subject to appropriate entry under the homestead laws to actual settlers only, the desert land law, to selections under the Carey Act, and to withdrawals under the reclamation act, whenever such entry, selection, or withdrawal shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands, and of the right to prospect for, mine and remove the same. It is further provided that all who have initiated nonmineral entries, selections, or locations in good faith prior to the passage of the act on lands withdrawn or classified as coal lands, may perfect the same under the provisions of the laws under which the entries were made, but shall receive the limited patent provided for in the act.

An application to make soldiers' additional entry under the provisions of section 2306 and 2307, Revised Statutes, for a tract at the date of the application included in such a withdrawal, does not fall within the terms or conditions of either of the acts, subject to whose provisions the withdrawal of the land here in question was made, even if the application were filed with a view to obtaining title with a reservation of the coal in the land to the United States. It is true that it is an application to enter under the homestead laws, but entries authorized by the act of June 22, 1910, to be made under the homestead laws upon withdrawn lands are those "by actual settlers only," and a soldiers' additional entry would not be one of that character. Jacob Jenne (40 L. D., 408).

It is immaterial that a tract so applied for may be after examination by the Geological Survey classified and restored as noncoal land for the mere withdrawal of land for classification purposes, so long as it remains unrevoked, reserves the land from disposition under any form of entry, selection, or location not specifically authorized by the act, subject to the provisions of which such withdrawals are made. Therefore, even if the tract here in question should be classified and restored as noncoal land it would not be subject to disposition under the present application, the Department having held that it will not recognize any rights as attaching by an unauthorized application to a tract covered by a withdrawal, unless and until the tract has been released therefrom. George B. Pratt *et al.* (38 L. D., 146); Instructions (40 L. D., 415). It is further held by the Depart-

ment that there is no authority to receive an application to locate, enter or select lands which have been merely withdrawn for classification purposes and not yet classified, and holding the same suspended pending the result of a hearing upon the request of the applicant to determine the character of the land with reference to its coal value. *Albert L. Woodhouse (41 L. D., 145).*

For the reason stated the application must be rejected and the request for a report from the Geological Survey in so far as it has any reference to the application denied.

The decision appealed from is accordingly affirmed.

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### MANUEL SMITH.

*Decided October 23, 1915.*

#### MILITARY RESERVATION—HOMESTEAD ENTRY—COMMUTATION.

Commutation of a homestead entry of lands within an abandoned military reservation, made under the act of August 23, 1894, can be allowed only upon full payment of the appraised value of the land.

*JONES, First Assistant Secretary:*

Manuel Smith appealed from decision of June 19, 1915, requiring him to make full payment on commutation of his homestead entry for S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 4, T. 14 S., R. 16 E., G. & S. R. M., Phoenix, Arizona.

May 15, 1913, Smith entered the above land, part of the abandoned Ft. Lowell Military Reservation, under the act of August 23, 1894 (28 Stat., 491). September 9, 1914, he submitted commutation proof which was not accompanied by any payment of the appraised price of the land. The local office informed the Commissioner that the first instalment on account of the appraised price did not fall due until September 11, 1915. The Commissioner held that commutation proof can not be accepted without full payment of the appraised value of the land, referring to instructions of March 14, 1904, which followed those of April 9, 1895 (20 L. D., 304).

The appeal contends that the payment in commutation cases is entitled to be extended through several years as though commutation had not been made.

The instructions refer to the Ft. Bridger Reservation, opened to entry under the same act, and provide that:

Under the provisions of the homestead law, an entryman has the right either to commute his entry after fourteen months from the date of entry or offer final proof under Sec. 2291 R. S. In entries under said act of August 23, 1894, he may, at his option, commute after fourteen months with full payment in cash or, after submitting ordinary five year final proof and after its acceptance, he may pay for the land the full amount of the appraised value thereof, without interest.

It is thus seen that the construction upon the act was that in case of commutation full payment had to be made at the time of commutation proof. The commutation right does not arise from the act of 1894, *supra*, but from the homestead law, and the obligation to make full payment arises from the fact that commutation proof is offered instead of five year proof.

The decision is affirmed.

### NELSON GUNN ET AL.

*Decided November 3, 1915.*

#### REPAYMENT—FINAL DECISION OF COMMISSIONER—APPEAL.

A decision of the Commissioner of the General Land Office denying an application for repayment, from which no appeal was taken, is just as much a final decision as if appeal had been taken and final decision rendered thereon by the Secretary of the Interior.

#### REPAYMENT—FINAL DECISION—RES ADJUDICATA.

Where the Commissioner denied repayment in a number of like cases, from which action some of the parties appealed and some did not, and the Secretary of the Interior affirmed the Commissioner in the appealed cases, all the cases, whether appealed or not, are in the same situation, and the claims involved are equally *res adjudicata* within the departmental decision in the case of Thomas Hall, 44 L. D., 113, holding that where repayment of moneys paid in connection with a rejected timber and stone application was denied, in accordance with the rule then in force, on the ground of fraud in connection with the application, the fact that such rule was subsequently changed will not justify reconsideration of the case with a view to allowance of repayment.

#### JONES, *First Assistant Secretary*:

This is an appeal filed on behalf of Nelson Gunn, Mrs. Sidney Willis, Jonathan A. Botkin, Ida M. Botkin, Arthur Hollingsworth, Benjamin F. Negley, William W. Miller, Leonard Champo, administrator, estate of Silas O. Lesson, from decision of the Commissioner of the General Land Office dated June 3, 1915, denying applications for repayment of the purchase moneys paid by said parties on timber and stone entries made at Roseburg, Oregon.

The majority of these entries were canceled by the General Land Office on relinquishments filed in the face of contests or protests. Three of the parties, Nelson Gunn, Mrs. Sidney Willis, and William W. Miller, appealed to the Department from the action of the Commissioner of the General Land Office in 1905, which affirmed that of the local officers holding their timber land entries for cancellation on charges, in substance, that said entries were illegal and fraudulent. This action was affirmed by the Department October 29, 1906, it being found that an agreement entered into by said parties prior to entry was in violation of the timber and stone law, under which an applicant is required to state that he does not apply to purchase

land thereunder on speculation, "but in good faith to appropriate it to his own exclusive use and benefit"; and further, that he has not made any contract directly or indirectly with any person by which the title he might acquire shall inure "in whole or in part" to the benefit of any person except himself.

Three of these parties, Mrs. Sidney Willis, Arthur Hollingsworth, and Silas O. Lesson, heretofore applied for repayment and their applications were denied by the General Land Office in March and April, 1908. One of the three, Silas O. Lesson, appealed to the Department where, on June 27, 1908, the action denying repayment was affirmed, reference being made in the decision to the act of June 16, 1880 (21 Stat., 287). It was asserted in this appeal that the entry was relinquished in order to avoid contest on the ground that entryman was party to a contract alleged to be in violation of the timber and stone law. In denying repayment it was said:

The relinquishment was not for the purpose of avoiding conflict with any superior right and therefore can be regarded in no other light than a voluntary act which the Department has held does not constitute ground for repayment.

The present applications for repayment were denied by the General Land Office "on the ground that the entries were canceled for fraud, the entryman having been found guilty of acts repugnant to the provisions of the law under which their entries were made, and that (they) at this time can not be heard to say that there was no fraud, it being a well-established principle that upon application for repayment under an entry canceled as speculative in character, the applicant will not be permitted to go back of the judgment of cancellation and show that in fact the entry was not speculative." In addition to denying these repayment claims on the ground that the entries were canceled for fraud, it was also held by the General Land Office that in view of the case of Thomas Hall, in which the Department rendered decision March 31, 1915 (44 L. D., 113), said claims are *res adjudicata*. It was held in the Hall case, after referring to the case of Howard A. Robinson (43 L. D., 221), which changed the rule laid down in the cases of Mary O. Lyman (24 L. D., 493) and John Birkholz (27 L. D., 59), and which in force at the time repayment was denied in the three cases above-named:

It is a well-settled doctrine that a final adjudication will not be later disturbed because of a subsequent change in the construction of the law which governed the case at the time it was originally adjudicated. This rule has been generally enforced by this Department, even in cases where the Department's construction of statutes have been declared erroneous by the Supreme Court. (Frank Larson, 23 L. D., 452; *Mee v. Hughart et al.*, 23 L. D., 455).

Inasmuch as Hall's application for repayment was finally rejected more than five years ago, after it had received full consideration, it is not believed good administration will, in the light of the authorities above cited, justify any further or different action thereon at this time; and for that reason, the application is herewith returned without approval.

It is asserted in the appeal with reference to the three cases above referred to, that none of the parties appealed to the Department from the rejection by the General Land Office of their repayment claims formerly filed, and it is therefore urged that said claims are not *res adjudicata*, as held by that office, and that for a like reason the case of Thomas Hall is not applicable. The fact is, however, as above stated, that one of the parties, Silas O. Lesson, did appeal to the Department where his claim was denied; and as to the others, they having failed to appeal from the decision of the General Land Office rejecting their repayment claims, said decision became just as finally determinative as that of the Department in the Lesson case.

The finding of the Department on October 29, 1906, in those cases where appeals were taken from the action of the General Land Office holding the entries for cancellation on the ground of fraud, as well as of the finding of that office in the other cases which became final for want of appeal, is equally applicable to all the entrymen as they were all parties to the same agreement, which was held to be in violation of the timber and stone law. This is also true of the application for repayment, from the rejection of which by the General Land Office Silas O. Lesson appealed to the Department. The decision of the Department in that case denying repayment, and the decisions of the General Land Office which became final for want of appeal in those cases where repayment applications were filed, are equally applicable to all of these claims as it is impossible to distinguish them in any way.

The record upon which these entries were canceled has been re-examined in connection with the repayment claims, and it is impossible to escape the conclusion that said entries were fraudulently made in violation of the plain provisions of the timber and stone law as charged. The case of *Hafemann v. Gross* (199 U. S., 343), cited in the appeal, is not regarded as being in point here, nor is the cited case of *Thomas J. Keogh* (42 L. D., 28) controlling.

The right to repayment is determined by the specific statutory authority contained in the acts of June 16, 1880 (21 Stat., 287), and March 26, 1908 (35 Stat., 48). The finding of the Department in the case of Silas O. Lesson, that his relinquishment was, in view of the act of June 16, 1880, voluntary under the circumstances, which the Department has held does not constitute ground for repayment, was undoubtedly correct, as was also the action cancelling these entries because the terms of the timber and stone law had been violated. The act of March 26, 1908, authorizes repayment only in the absence of fraud or attempted fraud in connection with an application or entry. The facts and circumstances under which the entries in question were procured, as shown by the record already made up, are

sufficient to sustain the charge of fraud against the same and to bar the claims for repayment of the purchase money.

The decision of the General Land Office denying repayment in all these claims is hereby affirmed.

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### STATE OF NEW MEXICO v. GARRETT.

*Decided November 3, 1915.*

#### SCHOOL LAND—RECONVEYANCE FROM STATE.

Where a tract of land has passed to a State under its school grant, the land department is without authority to accept a reconveyance thereof from the State with a view to permitting an individual to acquire title thereto under the public land laws.

*JONES, First Assistant Secretary:*

This is a motion for rehearing by James B. Garrett in the matter of departmental decision of August 14, 1915, affirming a decision of the Commissioner of the General Land Office rejecting, as to the NW.  $\frac{1}{4}$ , his homestead entry 09093, made December 10, 1910, for the N.  $\frac{1}{2}$ , Sec. 16, T. 4 S., R. 37 E., N. M. P. M., Fort Sumner land district, New Mexico.

The claimant alleges settlement on October 21, 1908, while the land was unsurveyed. On April 1-6, 1909, the land was surveyed in the field and identified as a part of a school section. On May 1, 1909, the land involved was designated under the enlarged homestead act of February 19, 1909 (35 Stat., 639). On December 1, 1910, the plat of survey was filed in the local land office. On December 10, 1910, entry was allowed upon which proof was submitted July 1, 1913, and final certificate issued September 12, 1913.

When entry was allowed in this case, the State of New Mexico was notified under circular of April 30, 1907 (35 L. D., 581), but took no action. The State was not specifically cited in the published notice of final proof as required by circular of May 15, 1901 (30 L. D., 607), but it appears that a copy of the final proof notice was sent to the Commissioner of Public Lands for the State by ordinary mail on April 12, 1913, and that on May 22, 1913, said official filed an affidavit of protest in the local office against the acceptance of proof and asked for a hearing to determine the respective rights to the land. Notice of a hearing was duly issued and served by the local officers, setting date for same on August 29, 1913. On the date set, the homestead claimant appeared and submitted the testimony of himself and witnesses. No appearance was made by anyone on behalf of the State. Under this proceeding the local officers found that the claimant had settled upon a portion of the land involved

in October, 1908, and had extended his settlement to include 320 acres as soon as the land was designated under the act of February 19, 1909, *supra*. Under this finding the local officers dismissed the State's protest and issued final certificate.

Upon review of the case the Commissioner on October 2, 1914, found that when the entryman made settlement no law existed under which he could assert a claim for an area of more than 160 acres, and that as the act of February 19, 1909, *supra*, provided that no lands shall be subject to entry under said act until such lands be designated by the Secretary of the Interior, and that as prior to the date such lands were designated they had been identified by survey in the field as a part of a school section, the rights of the State of New Mexico under the acts of June 21, 1898 (30 Stat., 484), and June 20, 1910 (36 Stat., 557), had attached prior to any legally asserted rights to the whole area involved. The entry was accordingly held for cancellation as to the NW.  $\frac{1}{4}$ . Upon appeal this action was affirmed by the Department August 14, 1915.

In the motion for rehearing, resident counsel for the homestead claimant moves for equitable consideration and refers to the following cases, in which the equities of claimants have been recognized and which it is urged are essentially similar to the case here under consideration: Hyacinthe Villeneuve, Devils Lake, 01633, Minot 09948, Senate Bill 2547, House Bill 6260, Act of July 17, 1914, Patent No. 445018; Fannie Lipscomb, decided by the Department July 26, 1915; Mahlon Brown, decided by the Department August 17, 1915. It is finally urged in the motion for rehearing that if the claimant's equities cannot be recognized in any other manner, the Department call upon the State of New Mexico to reconvey to the United States and that the homestead entry thereupon be allowed to remain intact.

An examination of the cases referred to by counsel discloses that they are dissimilar in certain essential respects to the case here under consideration. In the case of Hyacinthe Villeneuve a homestead entry had been allowed upon a tract of land that had been patented to the Santa Fe Pacific Railroad Company, whose grantee had expressed a willingness to reconvey in order that effect might be given to the equities of the homesteader, whereas in the present case the State stands in the position of a protestant. In the case of Fannie Lipscomb the land was known to be coal in character prior to the date the rights of the State would have attached, and the State had used the land as a base for indemnity selection. The case of Mahlon Brown involved no question as to the status of the land and the matter was one entirely between the claimant and the Government, whereas in the case here under consideration, the rights of the

State have intervened and must be respected. It may be finally said that the land department has no authority to acquire a tract of land from the State of New Mexico for the purpose of conveying it to an individual.

There appears, however, to be no reason for confining the claimant in this case to the NE.  $\frac{1}{4}$  of the land involved. He alleges that a portion of his improvements have been placed upon the NW.  $\frac{1}{4}$  thereof and he may have thereby asserted a settlement claim to a portion of said NW.  $\frac{1}{4}$  prior to the date the land was identified by survey in the field. If this can be shown, the claimant should be allowed to retain by his entry those legal subdivisions upon which he asserted a settlement claim through improvements or otherwise prior to April 6, 1909, not to exceed 160 acres. Before this is permitted, however, the State should be served with rule to show cause.

The decision complained of is modified accordingly.

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**ALBERT M. SALMON.**

*Decided November 11, 1915.*

**STATE SELECTION—DEFECTIVE BASE—INTERVENING ADVERSE CLAIM.**

Where the base offered by a State to support a selection is defective and the selection is suspended to afford the State opportunity to substitute a good base, but before such substitution the land is embraced in an application to make additional entry under the enlarged homestead act, which is otherwise allowable, such application constitutes an intervening adverse claim and bars amendment and completion of the State selection.

**JONES, First Assistant Secretary:**

Albert M. Salmon has appealed from the decision of May 5, 1915, denying his application to amend an additional homestead application for the SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$  of Sec. 14, T. 142 N., R. 90 W., Bismarck, North Dakota, so as to add the NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  of said section, for the reason that the land described is shown by the records to be included within a State selection.

Salmon, holding an entry for 160 acres, applied for an additional 40 on December 6, 1913, at which time the NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  of Sec. 14 had not been designated for enlarged homestead entry. When it was later so designated, he promptly applied for it by amendment of his pending application. But shortly before such designation the State had selected the land, offering a defective basis therefor. The State's application was suspended, and thirty days given in which to supply a correct basis for the selection.

The Commissioner is of opinion that Salmon's application is of sufficient merit to be allowed but for the claim of the State.

It is urged on appeal, with citation of several cases, that in case of selection with a defective basis, the right of the State attaches only from the date when the defect is cured (27 L. D., 644); that a defective basis may be cured by cancellation or relinquishment in the absence of an adverse claim (10 L. D., 308); that a defective basis can not be amended so as to defeat an intervening claimant (15 L. D., 549). This principle is thus expressed in the instructions of June 23, 1910 (39 L. D., 39):

The substitution of the new and valid base may be permitted in cases where no intervening claim exists.

Amendment of a defective basis of a State's selection is allowed only in the discretion of the Commissioner of the General Land Office, and is conditioned always on the absence of intervening claims. An intervening claim, under such conditions, must be one which has arisen after the State's application was filed and before the State's amendment has been made.

Salmon's application to amend his additional homestead application is such an intervening adverse claim, and the Commissioner has held it to be good, aside from the State's selection. But the basis for the State's selection was invalid. The selection was held for cancellation, but permission to amend was accorded. This permission must be subordinate to any claim to the land which might be presented before the amendment was filed, since the State acquired no right till the defect was cured. It is accordingly held that Salmon's application to amend should be allowed, and the State's selection of the NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  of said Sec. 14 should be canceled.

The decision is reversed.

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THOMAS J. MURRAY.

*Decided November 13, 1915.*

**SOLDIERS ADDITIONAL—APPROXIMATION.**

Only one application of the rule of approximation will be allowed to any one soldiers' additional right; and where several rights or parts of rights are used in the same location, some of which have already had the benefit of the rule, approximation will only be allowed to an amount not greater than the area of that part of the consideration which has not had the benefit of approximation.

*JONES, First Assistant Secretary:*

Thomas J. Murray, assignee of soldiers' additional rights of Allen B. McDowell and John W. Tottersman, appealed from decision of July 29, 1915, holding for cancellation his location of the residue of said rights by entry of NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 12, T. 11 N., R. 19 W.,

S. B. M., Los Angeles, California, 40 acres, on the ground that the right of approximation was exhausted before his application.

No question is made of the validity of the rights. March 25, 1915, Murray filed application at the local office based on assignment of 18 acres of Tottersman's right and 4.02 acres of McDowell's right. The Commissioner found from his records that McDowell's right was originally for 70.48 acres which had been used in three parcels: 35.98 acres in Los Angeles entry 025295, 30.48 acres in Los Angeles entry 026033, leaving the residue, 4.02 acres, in Murray's application. No approximation had been made under McDowell's right.

Tottersman's right was for 80 acres and used in Los Angeles entry 023273, 40 acres; 22 acres in Los Angeles 025878 in connection with Solomon Epley's right for 9.49 acres and approximation was allowed for 8.51 acres. The remainder of Tottersman's right being 18 acres, it is assigned to Murray who seeks to apply with the 4.02 acres, residue of McDowell's right, in making entry for 40 acres, asking benefit of approximation to the amount of 17.98 acres.

It is evident that Tottersman's right had benefit of approximation. The entry, based on Epley's entire right of 9.09 acres with 8.51 acres by approximation, would have required, without the approximation, 30.51 acres of Tottersman's right instead of 22 acres. The Epley right being but 9.49 acres could not have made the entry of 40 acres, so that Tottersman's right necessarily shared in the benefits of approximation allowed in that case.

The McDowell right was but 4.02 acres remaining and could not of itself take 40 acres by approximation. Murray must avail himself of the residue of Tottersman's right which is not entitled to approximation.

It is insisted that as one of these rights did not have benefit of approximation, though the other had, when used together they are entitled to one approximation.

The Department can not concur in that contention. It was held in John S. Morton (34 L. D., 441) that only one application of the rule of approximation is allowed to each original soldiers' additional right. The same rule was laid down in Guy A. Eaton (32 L. D., 644). Soldiers' additional right is a bounty, given it is true in consideration of public service, but, being a bounty, can not be strained beyond its fair import. Where several rights are used in the making of an entry approximation should not be allowed to a greater amount than the area of that part of the consideration which has not had previous benefit of approximation. Consequently, in the present case, the benefit of approximation can not be used to more than 4.02 acres, that being the entire residue of McDowell's right. To allow a greater area is to permit Tottersman's right to have twice benefit of approximation.

In the entry made in connection with Epley's right of 9.49 acres there might have been assigned from Tottersman's right 30.51, leaving Tottersman only 9.49 acres, in which case the McDowell and the residue of Tottersman's rights together would have aggregated but 14.51 acres, less than sufficient by the aid of approximation to take the tract here applied for. There is no equity in the recipient of a bounty seeking to obtain more than was promised him. The public promise is discharged when the full quantity is secured. The division of these bounty rights for the evident and studied purpose of increasing the bounty is without merit in law or equity. The present instance is an example of that kind.

The decision is affirmed.

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**JENNIE P. MUSSER.**

*Decided December 13, 1915.*

**DESERTED WIFE—FINAL PROOF AND PATENT—ENLARGED HOMESTEAD ENTRY.**

Residence is not required upon an entry made under section 6 of the enlarged homestead act of February 19, 1909, and the deserted wife of one who made entry under that section is entitled to submit final proof and obtain patent for such entry in her own name under the act of October 22, 1914, without showing residence upon the land.

*JONES, First Assistant Secretary:*

Jennie P. Musser appealed from decision of August 6, 1915, rejecting her application as deserted wife to make final proof on her husband's homestead entry for lots 1, 2, and 3, W.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 35, T. 15 S., R. 11 $\frac{1}{2}$  W., S L. M., Salt Lake City, Utah, on the ground that the act of October 22, 1914 (38 Stat., 766), requires residence by the wife.

October 1, 1909, Parley Pratt Musser made homestead entry under Sec. 6, act of February 19, 1909 (35 Stat., 639). February 25, 1915, his wife filed in the local office notice of intent to make final proof, alleging that she had been deserted by her husband for more than one year. The local office rejected the application and that action the Commissioner affirmed. The act under which she desires to make proof provides:

That in any case in which persons have regularly initiated claim to public lands as settlers thereon under the provisions of the homestead laws and the wife of such homestead settler or entryman, while residing upon the homestead claim and prior to submission of final proof of residence, cultivation and improvements, as prescribed by law, has been abandoned and deserted by her husband for a period of more than one year, the deserted wife shall, upon establishing the fact of such abandonment or desertion to the satisfaction of the Secretary of the Interior, be entitled to submit proof upon such claim and obtain patent therefor in her name in the form, manner and subject to the conditions prescribed by Section 2291 of the Revised Statutes of the United States and acts supplemental thereto and amendatory thereof.

This was a remedial act. It showed no purpose of Congress to require more of the wife than would have been required of the husband had he completed the entry. Relief acts are to be liberally construed. The words of the act, "while residing upon the homestead claim and prior to submission of final proof of residence, cultivation and improvements, as prescribed by law, has been abandoned and deserted by her husband," are general in terms and, in substance, require of the wife no stricter proof of compliance with the law than is required by the husband should he offer final proof. There is no apparent reason why the wife of a man holding a homestead upon which his residence is excused should herself be required to make such residence or to do more than her husband would be required to do. The intent of the act was to excuse the wife from necessity of waging a contest against her husband and enabling her to make final proof and get patent direct without expense and delay of a contest.

The decision is therefore reversed and cause remanded for further proceedings appropriate thereto.

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PETER M. COLLINS.

*Decided November 19, 1915.*

FOREST LIEU SELECTIONS—VALIDITY OF BASE.

Where the application to purchase a tract of land from the State of California, assigned as base for a forest lieu selection, was made, and certificate thereon issued, in the name of a fictitious person, and assignment thereof made in the name of such fictitious person to a person in being, a patent issued to such assignee by the surveyor-general of the State is not void but voidable; but one claiming under such patent as a *bona fide* innocent purchaser for value must disclose all the facts surrounding the transaction and make a clear and convincing showing to establish his good faith.

JONES, *First Assistant Secretary*:

This is an appeal by Peter M. Collins from a decision of the Commissioner of the General Land Office dated January 15, 1914, holding for rejection his application No. 2809, filed March 21, 1900, at Miles City, Montana, under the act of June 4, 1897 (30 Stat., 36), for certain unsurveyed land in T. 3 S., R. 46 E., M. M., in lieu of the NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 16, T. 18 S., R. 33 E., M. D. M., California, lying within the Kern National Forest. Township 3 S., Range 46 E., was withdrawn from coal filing or entry by the Department April 18, 1908, and is embraced in Executive order of July 9, 1910, Montana coal land withdrawal No. 1, but has not yet been classified.

April 1, 1911, the Commissioner directed proceedings against this application upon the following charges:

1. That Thomas Maloney, whose name appears as applicant to the State for the base land involved in this selection, is a fictitious person and his name was forged to the application to the State for said base land, and also to the assignment purporting to convey his interest in said base land to George B. Bush, by George B. Bush or one of his agents, or some other person whose name is to the United States unknown.

2. That said Thomas Maloney, the State applicant being a fictitious person, no contract resulted from the making of said application to the State for said base land, and no rights were acquired under the certificate of purchase issued in the name of Thomas Maloney by the State of California, and no title was vested by the attempted assignment of said certificate of purchase to George B. Bush, and no title passed from the State of California by the issuance of patent for said base land to said George B. Bush, and no title passed by deed purporting to transfer said base land from said George B. Bush to Peter M. Collins, and no title passed by deed purporting to transfer said base land from said Peter M. Collins to the United States in exchange for said selected lands.

3. That said selection is fraudulent and illegal in that the lands offered as base for said selection were procured through fraudulent and corrupt practices from the State of California and in violation of Sec. 3495 of the Political Code of said State, in that the application to the State for said base land was not made for the use and benefit of Thomas Maloney, the applicant named, but for the use and benefit of Peter M. Collins, or one of his agents, or some other person whose name is to the United States unknown, with the intent on the part of said Peter M. Collins or one of his agents, or some other person unknown to present same or that same should be presented to the United States in exchange for public land of the United States in violation of the act of June 4, 1897.

After a hearing thereon the register and receiver by decision of May 1, 1913, found that the charges had not been sustained and recommended a dismissal of the proceedings.

The record discloses that the base land, together with other tracts were embraced in an application to purchase from the State of California, filed with the surveyor-general of that State August 26, 1897, and purporting to have been executed by one Thomas Maloney. The application was approved by the State surveyor-general February 12, 1898, and a certificate of purchase was issued in the name of Maloney March 22, 1898, reciting that 20% of the purchase price at \$1.25 per acre had been paid March 18, 1898. July 11, 1898, Maloney purported to convey the tract by deed to one George B. Bush. The remainder of the purchase price was paid to the State of California July 8, 1899, and the patent of the State was issued to said Bush September 5, 1899. Bush by deed dated March 13, 1900, conveyed the tract to F. A. Hyde, who in turn conveyed by deed dated March 15, 1900, to Peter M. Collins. The conveyance from Collins to the United States was made March 22, 1900.

The Commissioner found upon the testimony submitted that Maloney was a fictitious person and that since the State's title was

secured by means of the application by a fictitious person and the forged or fraudulent assignment from such fictitious person to Bush the patent issued by the State of California was void, passed no title to the United States, and was, therefore, not the proper basis for a lieu selection under the above act of June 4, 1897.

The question of forest reserve lieu selections based upon lands secured in fraud of the State of California was considered in the case of Thomas B. Walker (39 L. D., 426). It was there held in brief that where the State's patent issued to a fictitious person, such patent conveyed no title and would not be accepted by the United States as a basis of a lieu selection. It was also there held that where the base land was acquired by means of an application and purchase by a real person but not in his own interest but for the use and benefit of the party acquiring the title to the base land in violation of the laws of the State regulating the sale of its lands, a selection based thereon would not be approved unless the patentee of the State, or his grantee, occupied the position of a *bona fide* purchaser for value.

The Commissioner's view was that since the application had been made by a fictitious person to the State of California and the original certificate of purchase was issued in the name of such fictitious person, the assignment to Bush being forged and fraudulent, the patent issued by the State of California was without warrant of law and, therefore, void, although conveying the land to a person in being. The subject-matter of the patent from the State of California was within the jurisdiction of the surveyor-general of that State under its laws. It is true that if the facts had been called to the attention of that officer he would have declined to issue the patent. Such patent was in view of the facts now found by the Commissioner erroneously issued. This Department has recently considered the distinction between voidable and void patents in *Rogers v. Southern Pacific Railway Company* (43 L. D., 208). There a patent was erroneously issued to the Southern Pacific Railway Company under an indemnity selection for land not subject to such selection. It was held that such patent was not void but voidable and its issue removed the land from the jurisdiction of the land department. The legal title passed by such patent and could be recovered only by direct proceedings in the courts to set aside the patent within the time prescribed by the law for the bringing of such suit. Here likewise the patent issued by the surveyor-general of the State of California was voidable and not void.

Concerning the purchase of the base land by Collins, the record disclosed the following:

Jeremiah Collins testified that he is a resident of Helena, Montana, and has been the president of the Collins Land Company, a Montana

corporation, since 1899; that he was also the active business manager of that company; that during the years 1899 and 1900, the Collins Land Company purchased from F. A. Hyde and F. A. Hyde & Co., a very considerable area of "lieu selection rights under the act of June 4, 1897, said rights being based on school sections or portions of school sections in the State of California." That in some instances the Collins Land Company purchased the base land and the title was transferred to Peter M. Collins, the Vice-President of the Company, as a matter of convenience; that purchase was made by the Collins Land Company for a valuable consideration on the faith of the abstract of title furnished which showed that the State of California had issued its patent for the land and that the Collins Land Company had no knowledge or intimation of irregularities, if any, in connection with the purchase of the base land from the State but that the Collins Land Company was an innocent purchaser for value, without notice, relying upon the patent of the State of California.

As above pointed out in the case of Thomas B. Walker (39 L. D., 426), a selection based upon lands acquired fraudulently from the State by means of an application or purchase by a real person must be canceled unless the patentee of the State or his grantee occupies the position of a *bona fide* purchaser for value. The question arising therefore is whether under the testimony as above outlined Collins occupies the position of a *bona fide* purchaser for value.

From the record in these cases it seems clear that this purchase formed a part of a series of scrip transactions and does not present the case of individual purchases of separate tracts of land, as contemplated and required by the laws of the State of California.

The facts in this particular case, where the application to purchase was made and certificates issued in the name of a fictitious person, and later found its way, through transfers of record, to F. A. Hyde, who is generally known to the public, and without doubt to Collins, as a dealer in scrip rights, render it incumbent upon the Collins Company, when pleading that it is an innocent and *bona fide* purchaser for value, to submit a clear and convincing showing to establish its *bona fides*. In such a case, the alleged *bona fide* purchaser should disclose all of the facts surrounding the transaction, and present clear evidence of his good faith. Collins testified to the general conclusion that the Collins Land Company was an innocent purchaser for value without disclosing fully the facts upon which such conclusions was based.

In the case of Wright-Blodgett Company v. The United States, decided by the Supreme Court February 23, 1915, the defense of a

*bona fide* purchaser for value in a suit to set aside a patent issued by the United States was considered. The Supreme Court there said:

But this is an affirmative defense which the grantee must establish in order to defeat the Government's right to the cancellation of the conveyance which fraud alone is shown to have induced. The rule to this defense is thus stated in *Boone v. Chiles*, 10 Pet., 177, 211, 212: "In setting it up by plea or answer it must state the deed of purchase, the date, parties, and contents briefly; that the vendor was seized in fee, and in possession; the consideration must be stated, with a distinct averment that it was *bona fide* and truly paid, independently of the recital in the deed. Notice must be denied previous to, and down to the time of paying the money, and the delivery of the deed; and if notice is specially charged, the denial must be of all circumstances referred to, from which notice can be inferred; and the answer or plea show how the grantor acquired title. \* \* \* The title purchased must be apparently perfect, good at law, a vested estate in fee-simple. \* \* \* It must be by a regular conveyance; for the purchaser of an equitable title holds it subject to the equities upon it in the hands of the vendor, and has no better standing in a court of equity. \* \* \* Such is the case which must be stated to give a defendant the benefit of an answer or plea of an innocent purchaser without notice; the case stated must be made out, evidence will not be permitted to be given of any other matter not set out."

Under the facts, therefore, and in the light of the above decision of the Supreme Court, I am of the opinion that Collins has failed to show that he is a *bona fide* purchaser for value within the meaning of the case of *Thomas B. Walker*, *supra*.

Under the circumstances in this case, however, the Department feels that further opportunity should be afforded the lieu selector to make showing. While charge 3 indirectly raised the issue, and while Collins testified in a general way that the purchase of the base land was for a valuable consideration, without knowledge of irregularities, if any, in the transaction, and that the Collins Land Company was an innocent purchaser for value, his testimony is in the nature of conclusions merely and did not state facts supporting the same. The representative of the Government at the hearing failed to cross-examine Collins upon this subject, and therefore the Department is without sufficient evidence upon which to base any conclusion other than that above announced that Collins has failed to show that he is a *bona fide* purchaser for value. However, in order that no injustice may be done and that all the facts may be presented to the Department, the case is remanded, and the Commissioner of the General Land Office is directed to order a further hearing or proceeding, at which Collins may have an opportunity to present evidence tending to show whether he or the Collins Land Company was an innocent purchaser for value, without notice. The United States should be represented at such hearing, and such cross-examination had as will bring out all the facts attending the transaction. In the

event that the lieu selector fails to appear at the hearing when ordered, the case will be closed and the selection rejected. If appearance be had and testimony submitted, the Commissioner will take up the new record and render decision thereupon.

### BECKMAN v. TADY.

*Decided December 1, 1915.*

#### DESERT-LAND ENTRY—CONTEST—ACT OF MARCH 4, 1915.

Section 5 of the act of March 4, 1915, providing relief for desert-land entrymen, applies to all pending entries, whether contested or noncontested, and extends to cases brought and prosecuted to final hearing before the local office, at the expense of the contestant, prior to the passage of the act.

#### JONES, *First Assistant Secretary*:

Elizabeth Tady appealed from decision of June 25, 1915, holding for cancellation her desert-land entry for S.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 22; W.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 27; NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 28, T. 33 N., R. 7 E., M. M., Havre, Montana, for lack of a sufficient water supply.

September 24, 1909, Tady made entry on which she submitted final proof December 18, 1913, and final receipt issued to her.

September 23, 1913, Alvin E. Beckman filed contest affidavit, charging that claimant had wholly failed to improve or reclaim the land and no part had ever been reclaimed by conducting water thereon; that the land is nondesert and capable of raising and has raised reasonably remunerative crops without irrigation; that lands in the immediate neighborhood are cultivated without irrigation and occupied by settlers; that there is no feasible means of irrigating the land. Notice issued October 30, 1913, answer was filed and hearing had February 16, 1914, at the local office, which, January 15, 1915, found for contestant, recommending cancellation of the entry. The Commissioner affirmed that action.

The water supply is from the flow off of dry coulees having a small drainage area. Claimant had two reservoirs which, in the aggregate, would store little more than 14 acre-feet. There were no head gates to draw their water for irrigation but service from one by leak or break of the bank was obtained for brief time on a small area, somewhat improving the crop.

It is clear no permanent water supply existed accessible that entrywoman can avail herself of to effect reclamation. The drainage area can supply but little water and for but brief time. The record shows, however, that claimant has acted in good faith making considerable expenditure to effect reclamation, and she claims benefit of

the act of March 4, 1915 (38 Stat., 1161), in her appeal. This application contestant resists asserting that benefit of the act can not be extended to cases brought and prosecuted before passage of the act to final hearing before the local office at expense of a contestant.

This defense to claimant's application to relief under act of March 4, 1915, *supra*, can not be conceded. It applies to all pending entries, thus including those contested as well as noncontested ones. Congress may, pending contest, confirm an entry or relieve a claimant. *Emblen v. Lincoln Land Co.* (184 U. S., 660); *Roberts v. Spencer* (40 L. D., 306, 310). There is no right vested in a contestant until final order of cancellation and no rule of equity or law gives a contestant right to claim improvements made by another's expenditure of money or labor.

The decision, in so far as it holds the entry for cancellation for insufficient water supply, is affirmed, but nothing herein will bar claimant, on proper application, from relief under act of March 4, 1915, *supra*.

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### SHERMAN BARGER.

*Decided December 21, 1915.*

#### FORT PECK LANDS—HOMESTEAD ENTRY—EXTENSION OF TIME FOR PAYMENT.

The land department is without authority to extend the time fixed by section 8 of the act of May 30, 1908, for payment of the deferred instalments on entries of Fort Peck Indian lands made under the provisions of that act.

*JONES, First Assistant Secretary:*

Sherman Barger has appealed from the decision of July 1, 1915, in the above-entitled case, denying his application for an extension of time within which to make the second entry payment on his homestead entry 028320, made under the act of May 30, 1908 (35 Stat., 558), for the NW.  $\frac{1}{4}$ , Sec. 9, T. 28 N., R. 42 E., M. M. Glasgow, Montana.

He alleges lack of funds, because of inability to plant crops in season, as being the cause of his inability to pay. In his appeal he submits an affidavit stating that he had established residence upon the land embraced in his entry, and made valuable improvements thereon, and was then living upon the land; that he was unable to make the payment due under said entry, and asks an extension of time for six months within which to make said payment; that the reason for this request is that, owing to the lateness of the season when affiant's breaking was done, and when he began residing upon said land, he was unable to raise a crop on said entry during the year 1915, and that owing to the serious illness of his wife, she having been paralyzed during the summer of 1915, he had

been under unusually heavy expense, and is wholly without funds to make said payment.

He contends in the appeal that this Department has authority to make the extension. In this he appears to be mistaken.

The land is within the limits of the Fort Peck Indian Reservation. Section 8 of the act of May 30, 1908, *supra*, provides that the price of said land shall be the appraised value thereof as fixed by a commission, which in no case shall be less than one dollar and twenty-five cents per acre for agricultural, grazing, and arid land, and shall be paid as follows:

Upon all lands entered or filed upon under the provisions of the homestead law, there shall be paid one-fifth of the appraised value of the land when entry or filing is made, and the remainder shall be paid in five equal annual installments in one, two, three, four, and five years, respectively, from and after date of entry or filing, etc.

The President's proclamation opening these lands (42 L. D., 264), provides, among other things, that:

If any entryman fails to make any payment when it becomes due, all his former payments will be forfeited and his entry will be canceled.

It appears, therefore, this Department is powerless to give the relief asked for. He will be required to make the payment as directed, failing in which he will lose his entry.

The action appealed from is affirmed.

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WILLIAM L. SHANKS.

*Decided December 13, 1915.*

**SOLDIERS ADDITIONAL—MILITARY SERVICE.**

As a basis for a soldiers' additional right the soldier must have "served ninety days in the army of the United States;" and the fact that for pensionable purposes he was held to have been in the service of the United States for a period of ninety days within the meaning of section 4701, R. S., does not establish that he "served ninety days in the army of the United States" within the meaning of section 2304, R. S., on which his soldiers' additional right depends.

*JONES, First Assistant Secretary:*

William L. Shanks has filed a motion for rehearing of departmental decision of September 27, 1915 (not reported), alleging that there was error in said decision in holding his application for rejection for invalidity of the right assigned.

The grounds of alleged error in particular are substantially as follows:

(a) In not finding that the Department has already found that the soldier served a period of ninety days and was honorably discharged, as shown by the records of the Pension Office.

(b) In not holding that the period of service is not to be reckoned from the date of discharge, but from the number of days actually in the service, as shown by the record.

In support thereof, it is contended that the records of the War Department disclose the fact that the soldier was in the military service more than a period of ninety days, and that he remained in the service for some days thereafter, and that the records of the Department, in relation to the pensionable status of the widow, show the above facts.

Examination of the records of the Pension Office does not disclose, as is contended, that the Department has already found that the soldier served a period of ninety days. The same facts relative to his service were before that office that are presented here; that is, the soldier served seventy-eight days, having been mustered in April 9, 1865, and mustered out June 26, 1865. It appearing, however, that the regiment in which the soldier enlisted was not disbanded until July 12, 1865, a pension was allowed the widow of the soldier, under section 4701 R. S., which provides:

The period of service of all persons entitled to the benefits of the pension laws, or on account of whose death any person may become entitled to a pension, shall be construed to extend to the time of disbanding the organization to which such persons belonged, or until their actual discharge for other cause than the expiration of the service of such organization.

This section has no connection with Sec. 2304 R. S., which said section forms the basis for a soldiers' additional right. There is, therefore, no conflict in the Department's construction and application of the two statutes; and no error in not holding, in this case, that the date of discharge referred to in section 4701 R. S., *supra*, has no connection with section 2304 R. S.

An application based on a soldiers' additional right must be determined under section 2304, and it has been uniformly held by this Department that the length of service therein provided is reckoned from the date of muster-in and not from the date of enrollment, as for pensionable purposes. (Julian D. Whitehurst, 32 L. D., 356). The question presented, therefore, being whether the soldier "served ninety days in the army of the United States," as provided, and the record disclosing he did not, it must be held that the facts are not such as to bring the present case within the provisions of this section, and the motion is, accordingly, denied.

**AMENDMENT OF TIMBER AND STONE REGULATIONS.****CIRCULAR.**

[No. 450.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, December 20, 1915.*

REGISTERS AND RECEIVERS,  
*United States Land Offices.*

SIRS: The second paragraph of section 20 of regulations under the timber and stone law, approved November 30, 1908, embraced in Circular No. 289 (43 L. D., 37), is hereby modified to read:

If the register and receiver reject the application as to part or all of the land, upon the ground that the appraisal shows it not to be subject to timber and stone entry, applicant may within thirty days submit a showing by affidavit, corroborated by at least two witnesses having actual knowledge of the character of the land, setting forth facts which tend to disprove the appraisal and that it is chiefly valuable for the timber and stone thereon, and if a prima facie showing is made, thereupon a hearing shall be ordered to determine the facts, after a date has been fixed for the same by agreement between the chief of field division and the register and receiver.

Respectfully,

CLAY TALLMAN, *Commissioner.*

Approved:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

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**CREDIT FOR MILITARY SERVICE ON ENTRIES UNDER SECTION 6  
OF THE ENLARGED HOMESTEAD ACTS. .****CIRCULAR.**

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., December 24, 1915.*

REGISTERS AND RECEIVERS,  
*United States Land Offices in Utah and Idaho.*

SIRS: The provisions of section 2305, Revised Statutes, are applicable to entries under section 6 of the enlarged homestead acts.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved December 24, 1915:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

**EXCHANGE OF ALLOTMENTS—CEDED LANDS—ACT OF MARCH 3, 1909.****INSTRUCTIONS.**

[No. 455.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, December 27, 1915.*

**THE SECRETARY OF THE INTERIOR.**

SIR: Instructions of June 14, 1909 (38 L. D., 41), under the act of March 3, 1909 (35 Stat., 784), relative to the exchange of allotments, provide that the Indian officer having charge of the proposed change in an allotment shall promptly advise the register of the appropriate land office of such proposed change and directs the local officers to make proper notations on their plats and tract books and to thereafter allow no appropriation of the land pending final disposition of the application for exchange.

The last paragraph of said instructions provides:

As this notice is intended merely to serve the purpose of a caveat to prevent your subsequent disposition of the lieu land, you will give the same no serial number and make no report to this office thereof.

In practice it has been found that this procedure is not a sufficient safeguard to prevent allotment by the Indian Office of land which may have been entered at the local land office but the entry not received and noted on the tract book of this office prior to the allowance of the lieu allotment.

I have, therefore, to recommend that the last paragraph of said instructions of June 14, 1909, be amended to read as follows:

As this notice is intended merely to serve the purpose of a caveat to prevent the subsequent disposition of the lieu lands, you will give the same no serial number but will report to this office by special letter the contents of said notice.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved December 27, 1915:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

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**FRANK L. HUSTON.**

*Decided December 31, 1915.*

**NORTHERN PACIFIC ADJUSTMENT—ACT OF JULY 1, 1898—SETTLER.**

Where settlement was made upon land within the primary limits of the grant to the Northern Pacific Railway Company with the intention of purchasing from the company, but such purchase could not be consummated because the grant was forfeited by the act of September 29, 1890, the settler is entitled to relinquish the land so settled upon and select other land in lieu thereof under the provisions of the act of July 1, 1898.

JONES, *First Assistant Secretary*:

Frank L. Huston has appealed from the decision of August 31, 1915, rejecting his application to make individual selection under the act of July 1, 1898 (30 Stat., 620), in lieu of the NE.  $\frac{1}{4}$ , Sec. 15, T. 4 N., R. 19 E., Vancouver, Washington, relinquished by him.

The land was within the primary limits of the Northern Pacific Railway grant, but was entered by and patented to one Alfred C. Woods, in 1899, from whom Huston derived title. Huston relinquished the land in 1907, for the purpose of adjustment under the law, and was advised that he was entitled to make a lieu selection under the said act of July 1, 1898, as extended by the act of May 17, 1906 (34 Stat., 197). The later act limits the choice to the State in which the relinquished land lies.

The Commissioner holds that Huston is not entitled to the benefits of the act of 1898 above cited, because the entryman Woods in his declaratory statement of November 25, 1898, declared he had settled on the land in 1884, with the intention of purchasing it from the Northern Pacific Railway. But when the railway grant was forfeited by act of September 29, 1890 (26 Stat., 496), it was provided that such settlers should be entitled to purchase the lands from the United States. Accordingly such a settler is held to have had claim of right under a law of the United States, in the language of the act of July 1, 1898.

The decision is accordingly modified so as to permit the appellant to make lieu selection under said act.

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### NORTHERN PACIFIC RY. CO. v. NELSON.

*Decided December 31, 1915.*

#### NORTHERN PACIFIC ADJUSTMENT—ACT OF JULY 1, 1898.

It was the purpose of the act of July 1, 1898, to settle disputes between settlers and the Northern Pacific Railway Company and prevent litigation; and where the company, instead of seeking adjustment under that act, litigates its claim to final judgment and loses the land, it is not entitled to select other land in lieu of that lost as a result of such litigation.

#### RELINQUISHMENT NECESSARY TO ADJUSTMENT UNDER ACT OF JULY 1, 1898.

Under the act of July 1, 1898, a "proper relinquishment" of the land in dispute is essential to the right of selection; and where the company has litigated its claim to final judgment and lost the land, and therefore has nothing to relinquish, it is not entitled to select other land in lieu of that lost as a result of such litigation.

JONES, *First Assistant Secretary*:

The Northern Pacific Railway Company has appealed from the decision of the Commissioner of the General Land Office of November

13, 1912, rejecting its application for adjustment under the act of July 1, 1898 (30 Stat., 597, 620), of its claim to the SE.  $\frac{1}{4}$ , Sec. 27, T. 20 N., R. 14 E., W. M., North Yakima, Washington, land district.

The land is within the primary limits of the grant to the Northern Pacific Railroad (now Railway) Company, by act of July 2, 1864 (13 Stat., 365), as shown by withdrawal map of general route filed August 15, 1873, and is situated opposite that portion of the company's line of road which was definitely located December 4, 1884.

Hemming (Henry) Nelson on May 10, 1893, filed application to make homestead entry for the above described land, which was rejected for conflict with the grant to the railroad company and because residence was not shown prior to the date of withdrawal. Nelson appealed, and his application was finally rejected November 15, 1894, and the case closed. The tract of land being clear of conflict, as shown by the records in the land office, was patented to the railroad company May 10, 1895.

The railroad company instituted suit in one of the courts of the State of Washington against Nelson for the recovery of the possession of the land, which was decided by the Supreme Court of the United States in favor of Nelson, January 26, 1903 (*Nelson v. Northern Pacific Railway Company*, 188 U. S., 108).

Numerous disputes had arisen between the railroad company and settlers on the land embraced within the primary and indemnity limits of the grant to the company, and the act of 1898 was an offer of compromise of all such disputes, existing at the time of the passage of the act, by allowing the railroad company the right to select land in lieu of that relinquished by it in favor of the settler (*Humbird v. Avery*, 195 U. S., 480). The railroad company did not see fit to accept this offer of compromise as to the land involved herein, but elected to pursue its claim in court.

The act does not contemplate that the railway company should be permitted to litigate its claim to completion, and in the event of an adverse decision be entitled to select other land for that lost as the result of such litigation. This would be contrary to the spirit and letter of the act, the very purpose of which was the settlement of disputes and the prevention of litigation.

The act provides for the selection of lieu land by the company "upon a proper relinquishment" of the land in dispute with the settler. Such relinquishment is essential to the right of adjustment and as the company has been divested of its entire interest in the land by the decision of the Supreme Court, it has nothing to relinquish.

The company having rejected the compromise offered by the act by litigating its claim to completion in court, is not now entitled to the benefits of the act, and its claim for adjustment herein is denied.

The decision of the Commissioner is accordingly affirmed.

**HESTER v. EASTWOOD.**

*Decided June 30, 1915.*

OKLAHOMA PASTURE LANDS—CONTEST—ACT OF AUGUST 1, 1914.

Homestead entries of Oklahoma pasture lands under the act of June 5, 1906, are by the terms of the act of August 1, 1914, excepted from cancellation for any cause except fraud, and are not therefore subject to contest on the ground of failure to establish residence, make improvements, or otherwise to comply with the requirements of the homestead law.

JONES, *First Assistant Secretary*:

William C. Hester appealed from decision of March 9, 1915, reinstating Arthur J. Eastwood's homestead entry for the NE.  $\frac{1}{4}$ , Sec. 19, T. 3 S., R. 16 W., I. M., Guthrie, Oklahoma, land district, and dismissing Hester's contest against the same, on the ground that the cause of action was not stated by the contest.

This land is within the Kiowa, Comanche, and Apache tract known as pasture land, opened to entry under acts of June 5, 1906 (34 Stat., 213), and June 28, 1906 (34 Stat., 550). It was offered at public sale and was bid in by Eastwood for the sum of \$2,000, and March 25, 1907, he made homestead entry therefor, having paid \$400 of the purchase price at the time of sale. August 13, 1914, Hester filed contest, charging that entryman had never established residence on the land and had wholly failed to make improvements thereon. Notice was served and Eastwood made denial. December 12, 1914, the Commissioner canceled the entry and closed the case. Subsequently, that officer took note of section 16, Indian Appropriation Act of August 1, 1914 (38 Stat., 582), which provided—

That no payment shall be deferred beyond the time prescribed in the act herein cited and no forfeiture of entry shall be declared except for fraud—and held that the contest charged no fraud and the cancellation was erroneous and contrary to the provisions of this act. He reinstated the entry and dismissed the contest.

The appeal contends that the contest was well brought under the act of June 5, 1906, *supra*, which requires settlers to comply with the homestead laws. It is insisted that the provision in the act of August 1, 1914, *supra*, does not relieve the entry from a charge of failure to comply with the general homestead law.

By its terms the act of August 1, 1914, holds these entries excepted from cancellation for any cause but the one named, and in view of the Department is applicable to all entries under the act of June 5, 1906, *supra*.

The decision is affirmed.

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**HESTER v. EASTWOOD.**

Motion for rehearing of departmental decision of June 30, 1915, 44 L. D., 508 denied by First Assistant Secretary Jones, November 23, 1915.

## SANTA FE PACIFIC R. R. CO.

January 6, 1916.

## INDIAN LANDS—EXCHANGE—ACT OF MARCH 4, 1913.

Under the provision in the act of March 4, 1913, that selections in lieu of lands occupied by Indians, relinquished or reconveyed under that act, must be made "within a period of three years after the approval of this act," it is sufficient if the selections, accompanied by proper relinquishment or reconveyance, be made within the time specified, notwithstanding examination of the land and approval of the selections is not made until after the expiration of that period.

## AMENDMENTS OF SELECTIONS AFTER EXPIRATION OF PERIOD.

No amendment operating as a new selection can be allowed after the expiration of the three-year period mentioned; and as to amendments after that time going only to matters of form, or which fall within the purview of section 2372, Revised Statutes, as amended, each case will be considered and dealt with on the particular facts presented.

*Letter by Commissioner Tallman, approved by First Assistant Secretary Jones, to Messrs. Britton and Gray, Washington, D. C.*

This office is in receipt of your letter of October 19, 1915, relative to the relinquishment or reconveyance by the Santa Fe Pacific Railroad Company of certain lands in Arizona and New Mexico under the act of March 4, 1913 (37 Stat., 1007). You ask to be advised whether a selection filed prior to March 3, 1916, accompanied by proper relinquishment or reconveyance, can be perfected under the said act if the lands are not examined and other preliminaries complied with until after said date. You also ask to be advised whether an amendment after March 3, 1916, of a selection filed prior to that date will relate back to the time of the original selection. You state, apparently as an explanation of why you make the above request, that it will be useless for the company to reconvey its lands and make selections in lieu thereof at this late day if the field examinations of the lands have to be made and other preliminaries complied with prior to March 3, 1916, inasmuch as it will in all probability be months after the reconveyances and selections are filed before the examinations and other preliminaries can be completed.

The said act of March 4, 1913, authorizes requests to be made of railroad companies or their grantees for the relinquishment or reconveyance of certain lands shown to have been occupied for five years or more by Indians entitled to receive the lands in allotments under existing laws but for the grant to the railroad companies, and the act further provides that:

The company relinquishing or reconveying shall be entitled to select within a period of three years after the approval of this act and have patented to it other vacant nonmineral, nontimbered, surveyed public lands of equal area and value.

It is clear from the above that the relinquishments or reconveyances of said lands by the railroad companies and their selections of lands in lieu of the lands relinquished or reconveyed must be filed within three years from March 4, 1913. The question raised by your letter is whether selections filed within said three-year period may be approved and patented after the expiration of said period.

Practically all the requests for the relinquishment or reconveyance of lands in Arizona and New Mexico have been made within the past twelve months and nearly all of these in the past three or four months. There are still more requests to be made. The Santa Fe Pacific Railway Company being the railroad company concerned in the States of Arizona and New Mexico has informally expressed a willingness to relinquish or reconvey its lands coming under the provisions of the said act for the benefit of the Indians concerned. As suggested by your letter, it will be necessary to have an examination made in the field of both the lands reconveyed and those selected in lieu thereof by the company before the company's selections can be approved and patented, and there might also be other matters requiring consideration and action. Considering the large number of cases involved and that only one reconveyance and selection has so far been filed, it is apparent that in all probability this office will not be able to approve and patent the company's selections yet to be filed within the remaining portion of the period named by the act. The lateness in making these reconveyances is due in a majority of the cases to the delay of the Indians in making their showings as to the occupancy of the lands involved and not to the fault of the railroad company. Said act is primarily for the benefit of the Indians concerned and in view of this and the foregoing facts the statute should receive a liberal construction, if necessary, to carry out the purpose of the act, which was to obtain said lands for the Indians who had occupied them for five years or more. However, the act plainly limits the time in which railroad companies or their grantees may exercise their rights of selection, but does not expressly or by implication limit to any fixed period of time the exercise of departmental jurisdiction or authority to discharge its administrative functions pursuant to the act. (Sec. 433, 434, Endlich on Interpretation of Statutes; *Dow v. Young*, 4 New England Reports, 503.) The selections must, therefore, be complete on March 4, 1916, so far as the company itself is required to participate in their perfection; but no reason is seen why examination of the land may not be made and other administrative acts performed by the Department after March 4, 1916, in any case where a proper relinquishment or reconveyance of the company's lands and a proper selection by the company of lands in lieu thereof are filed prior to March 4, 1916.

As indicated by what has already been said no amendment operating as a new selection can be made after March 4, 1916; and as to others which are claimed to go only to mere matter of form or to fall within the purview of the statute, R. S. Sec. 2372, as amended by act of February 24, 1909 (35 Stat., 645), they will of course have to be dealt with as they arise and as the Department shall be then advised upon the law and the facts of each particular instance.

### ICICLE CANAL COMPANY.

*Decided January 8, 1916.*

#### RIGHT OF WAY OVER INDIAN ALLOTMENT.

The Secretary of the Interior is without authority to approve an application under the act of March 3, 1891, for right of way over land covered by a trust patent on an Indian allotment made under section 4 of the act of February 8, 1887.

JONES, *First Assistant Secretary*:

I am in receipt of your [Commissioner of the General Land Office] letter of November 9, 1915 ("F" Waterville, 014534 M. N.), relative to the application of the Icicle Canal Company, under the act of March 3, 1891 (26 Stat., 1095), and section 2 of the act of May 11, 1898 (30 Stat., 404), for right of way for a canal traversing lots 1 and 7 and the NE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 22, T. 24 N., R. 18 E., W. M. You recommend that the application be approved.

It appears that the above land was included in allotment application No. 9, Waterville series, filed June 30, 1900, by Sam Moise, a Wenatchee Indian, under section 4 of the act of February 8, 1887 (24 Stat., 388), as amended by the act of February 28, 1891 (26 Stat., 794).

This application was approved by the Department June 1, 1907, trust patent being issued December 9, 1907.

The act of March 3, 1891, *supra*, in section 18, grants right of way—

through the public lands and reservations of the United States. \* \* \* provided that no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the Department of the Government having jurisdiction of such reservation.

Section 19 of the act of March 3, 1891, requires maps of the canals and reservoirs to be filed in the appropriate land office, and provides that—

Upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way.

Section 4 of the act of February 8, 1887, *supra*, under which the allotment here in question was made, authorized such allotment to an Indian—

not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or Executive order—

and who has made settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated.

Section 5 provides for the issuance of a trust patent which—

shall be of a legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made . . . and that at the expiration of said period, the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or encumbrance whatsoever.

In the case of Fresno Water-Right Canal (35 L. D., 550), it was held that an application for a right of way, under the act of March 3, 1891, could be approved, where the lands sought were within an Indian reservation, notwithstanding they may have been allotted to individual Indians. The report of the case fails to disclose whether the allotments had been approved or passed to trust patent. At page 551, the Department said:

In returning the papers it is deemed but necessary to invite your attention to the fact that section 18 of the act of 1891, under which the right is sought, provides for the granting of a right of way for purposes similar to that desired by applicant, over the public lands and the reservations of the United States, and the fact that the lands sought to be traversed have been actually allotted does not, in my opinion, take them out of the scope of the act.

The above case, however, is distinguishable from that under consideration, due to the fact that it involved allotments within a technical Indian reservation, while the present case involves an allotment to an Indian who settled upon the public land.

The cases of the Coachella Valley Ice and Electric Company, and the Southern Sierra Power Company, cited by you, and which were made the subject of an opinion by the Assistant Attorney General of this Department, June 23, 1914, are not applicable. They involve applications for permits, under the act of February 15, 1901 (31 Stat., 790), and a right of way, under the act of March 4, 1911 (36 Stat., 1253), over the Morongo and Cabazon Indian reservations, California. The above reservations had been purchased for the Indians with funds belonging to the Indians, and a trust patent had been issued for the entire reservation to the Indian band, as a community. They were held to be reservations within the meaning of the acts of February 15, 1901, and March 4, 1911. Further, it was held that since, under the act of February 15, 1901, a mere revocable permit was issued, and that, under the act of March 4, 1911, the period of the easement could be limited, to expire with the ending of the trust period, the approval of the applications did not

violate the government's obligations to the Indian bands under the trust patent.

In the present case, the act of March 3, 1891, grants a perpetual easement over either public lands or reservations of the United States. It is extremely doubtful that an allotment under section 4 of the act of February 8, 1887, upon the public domain, can be regarded as a reservation. By the approval of allotment and issuance of trust patent the Indian was given a written promise that the particular tract would be held in trust for him and that ultimately he should have a fee simple patent, and it is, therefore, very doubtful, to say the least, if land in such status can be considered to be public land of the United States, within the meaning of the act of March 3, 1891. The grant of a perpetual easement, under the act of March 3, 1891, conflicts with the Government's obligations to the Indian, as set forth in section 5 of the act of February 8, 1887, since it prevents the issuance of the fee patent "free of all charge or encumbrance whatsoever."

I am, accordingly, of the opinion that there is no authority under the act of March 3, 1891, for the approval of the application here involved.

Your letter discloses that the superintendent of the Colville school has assessed damages arising to the Indian because of the right of way desired, against the Icele Canal Company, in the sum of one hundred dollars, which amount has been deposited, and is now held by the superintendent. The allottee, it appears, has agreed, in writing, to the granting of the right of way, in consideration of that amount. Proper approval by the Department will be given due consideration upon the presentation of the matter by the Commissioner of Indian Affairs, who has been furnished with a copy of this communication.

Your recommendation is, accordingly, not concurred in, and the papers are herewith returned.

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### INSTRUCTIONS.

*January 13, 1916.*

#### ROADS, TRAILS, BRIDGES, ETC. IN NATIONAL FORESTS—EXCEPTION IN PATENTS.

Where "roads, trails, bridges, fire lanes, telephone lines, cabins, fences, and other improvements necessary for the proper and economical administration, protection, and development of the national forests," have been actually constructed and are being maintained upon public lands of the United States under the provisions of the act of March 4, 1915, or survey has been made and the area needed for such improvements definitely fixed and the construction thereof has been provided for and will be immediately undertaken, and the lands are thereafter disposed of under any of the public land laws, the final certificate and patent should except such portion thereof as is so devoted to public purposes.

JONES, *First Assistant Secretary*:

I am in receipt of your [Secretary of Agriculture] letter of November 4, 1915, referring to the instructions of this Department, dated August 31, 1915 [44 L. D., 359], to the Commissioner of the General Land Office, concerning constructed Forest Service telephone lines crossing lands within national forests and listed and entered under the homestead law of June 11, 1906. The Commissioner of the General Land Office was there instructed as follows:

In cases where telephone lines or like structures have been actually constructed upon the public lands of the United States, including national forest lands, and are being maintained and operated by the United States, and your office is furnished with appropriate maps or field notes by the Department of Agriculture so prepared as to enable you to definitely locate the constructed line, proper notation thereof should be made upon the tract books of your office and if the land be thereafter listed or disposed of under any applicable public-land law, you should insert in the register's final certificate and in the patent when issued the following exception:

"Excepting, however, from the conveyance that certain telephone line and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described, and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States."

In your present communication, you refer to the appropriation act of March 4, 1915 (38 Stat., 1100), containing the following provision:

For the construction and maintenance of roads, trails, bridges, fire lanes, telephone lines, cabins, fences, and other improvements necessary for the proper and economical administration, protection and development of the national forests, \$400,000—

and state as follows:

This act provides for the construction of such improvements of the foregoing class as may be necessary for the purpose already enumerated, and provides as well for the maintenance of those which are already constructed. The expenditure of money from this subappropriation, in accordance with its provisions, would appear to me directly to result in devoting to public purposes the land upon which such money is expended. This expenditure may be either for construction or maintenance. One of the first and most desirable things, either for construction or maintenance, is definite location by means of survey. I see no reason why the expense of such survey should not be charged against the subappropriation quoted, and it would appear to me that such expenditure would in itself be sufficient to devote the land to public purposes as being "necessary for the purpose of proper and economical administration, protection, and development of the National Forests."

I shall appreciate it if you will advise me whether in the case of such expenditure and the subsequent listing of the land, your Department has authority to include such an exception in the final certificate and patent, provided at the time of listing you are furnished with evidence of the fact that a certain part of the land has been so devoted to public purposes, accompanied by the necessary tracings showing the location and extent of such appropriation.

I am of the opinion that the same reasoning as adopted in the Department's instructions of August 31, 1915, to the Commissioner of the General Land Office, relative to telephone lines constructed under authority of similar appropriation acts applies to the other kinds of improvements mentioned in the above act of March 4, 1915; and that similar exceptions as to lands needed for such improvements may be inserted in the register's final certificate, and in the patent when issued. Your communication, however, would appear to take the view that a mere preliminary survey is sufficient as a devotion of the land to the public use indicated. Without expressing a definite opinion at this time, I would incline to the view that a mere preliminary survey, which might or might not be later followed by construction, is not an appropriation of the land to the public use. It would seem that some action indicating upon the ground itself that the tract has been devoted to the public use, is necessary—such as staking the area to be retained by the United States, accompanied by a setting aside of a sufficient part of the appropriation for construction. In other words, the case should be one of either actual construction, or in which the evidence shows that the construction has been provided for, and will be immediately undertaken.

A copy of this communication has been furnished the Commissioner of the General Land Office, for his information.

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## FURNISHING COPIES AND PERMITTING INSPECTION OF RECORDS.

### INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, January 15, 1916.*

The SECRETARY OF THE INTERIOR.

SIR: I am in receipt of your instructions of August 4, 1915 [44 L. D., 235], relative to furnishing certified copies and permitting inspection of the records of the Interior Department, and for the reasons hereinafter set forth, I respectfully request you to modify said instructions in the following particulars:

1. That you will permit me, in my discretion to waive requirement 3, paragraph 1.
2. That you will permit excess money, where the amount does not exceed the cost of the copy by more than 10 cents, to be turned into the Treasury as "earned."

3. I request permission to follow the instructions of January 23, 1913 (41 L. D., 475), in the matter of furnishing typewritten copies.

Respectfully,

CLAY TALLMAN, *Commissioner*.

Approved:

ANDRIEUS A. JONES,

*First Assistant Secretary.*

### CLEAR WATER TIMBER COMPANY.

*Decided January 15, 1916.*

REPAYMENT—ASSIGNEE—LEGAL REPRESENTATIVE—ACT OF MARCH 26, 1908.

A qualified assignee of a timber and stone entry is the "legal representative" of the assignor within the meaning of the repayment act of March 26, 1908, and entitled to repayment thereunder, provided it be conclusively shown that the assignee has not been indemnified by the assignor for failure of title.

JONES, *First Assistant Secretary*:

The Clear Water Timber Company has appealed from the decision of the Commissioner of the General Land Office rendered July 29, 1914, in the above-entitled case denying repayment to said company of the purchase money paid in connection with timber and stone entry 95261, made by David L. Wheeler, for the SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 18, N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 19, and NW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 20, T. 37 N., R. 6 E., B. M., Lewiston, Idaho, land district.

It is shown by the record that Wheeler filed his timber and stone sworn statement for the above-described lands April 11, 1906, and submitted proof on June 25, 1906, paying the purchase price amounting to \$400. Receiver's final receipt No. 6372 (old series) issued June 8, 1907, with the notation thereupon, "Register's certificate not yet issued."

June 19, 1907, Wheeler assigned the land to one J. W. Killinger, for a valuable consideration, who in turn, on July 1, 1907, assigned the land to the Clear Water Timber Company, the present applicant for repayment on appeal. Both assignments were duly noted by the county recorder for the county wherein the land is situate, but neither assignment was made a matter of record in the local office.

Wheeler, the original claimant, on November 26, 1907, with little or no respect for the rights of his assignees, and taking advantage of the fact that the records of the local land office failed to show any notation of his previous assignment of the entry, executed a relinquishment of said entry and sold the same to one Mary E. Orndorff for \$600, who, after the relinquishment had been noted in the local

office, immediately filed timber and stone sworn statement, now Lewiston 0739, for the same land. Proof was offered by Orndorff February 26, 1908, and final certificate and patent subsequently issued to her, after a hearing was duly had upon protest by the Clear Water Timber Company, claiming as assignee.

The Commissioner of the General Land Office and the Department found, on successive appeals, that Mrs. Orndorff was an innocent purchaser of Wheeler's relinquishment and entitled to make entry and that the Clear Water Timber Company was estopped from then asserting its claim as superior to that of Mrs. Orndorff, on the ground that it was guilty of laches by failure to record its assignment on the records of the local office.

By the decision now appealed from the Commissioner held that the Clear Water Timber Company was not entitled to repayment under the provisions of section 2 of the act of June 16, 1880 (21 Stat., 287), finding that the entry had not been canceled for conflict with any prior right or entry and that it was not erroneously allowed by the Government.

No discussion is deemed necessary with respect to the correctness of the Commissioner's decision in so far as the right to repayment under the act cited is concerned, the record clearly establishing the fact that repayment was properly denied thereunder.

No reference was made in the Commissioner's decision to the repayment act of March 26, 1908 (35 Stat., 48), section 1 of which provides:

That where purchase moneys and commissions paid under any public land law have been or shall hereafter be covered into the Treasury of the United States under any application to make any filing, location, selection, entry, or proof, such purchase moneys and commissions shall be repaid to the person who made such application, entry, or proof, or to his legal representatives, in all cases where such application, entry, or proof has been or shall hereafter be rejected, and neither such applicant nor his legal representatives shall have been guilty of any fraud or attempted fraud in connection with such application.

It is evident that this case was not considered under the section of the act of March 26, 1908, above quoted, for the reason that the Commissioner construes said act as not authorizing repayment to assignees, in view of the fact that the word "assigns" does not appear therein, as it does in the repayment act of June 16, 1880, *supra*.

In the first place the record establishes the fact that Wheeler's assignment of the claim to J. W. Killinger June 19, 1907, and the latter's assignment to the Clear Water Timber Company, July 1, 1907, were made subsequent to submission of final proof and issuance of final receipt June 8, 1907. The assignments were regular and valid. The legality of the assignments is not at issue. *Williamson v. United States* (207 U. S., 425).

It devolves upon the Department for a proper disposition of this case and in order to ascertain whether or not the Clear Water Timber Company, as assignee, is entitled to repayment of the purchase money paid in connection with Wheeler's canceled entry, to determine whether or not an assignee, recognized as such under the public land laws, is a legal representative of the assignor within the meaning of section 1 of the act of March 26, 1908, *supra*, for the purpose of repayment, and if so, whether the facts in this particular case warrant repayment.

When Wheeler assigned his entry, June 19, 1907, he assigned all the right, title and interest he had in the premises and his relinquishment after assignment would not have been accepted had the assignees asserted their rights and given the Government notice thereof. The fact that Wheeler relinquished his entry, through deceit and to the detriment of his *bona fide* assignees, such relinquishment when it became operative did not eliminate the Clear Water Timber Company from being recognized as his assignee in fact, in so far as Wheeler was concerned. Said Company was at all times after assignment, and is now, Wheeler's assignee and legal representative in so far as any proceeding with respect to his (Wheeler's) assigned entry is concerned.

In the case of *Hogan v. Page* (69-U. S. [2 Wall.], 605, 607) the Supreme Court in passing upon the rights of legal representatives to acquire title to public lands under a patent issued by the Commissioner of the General Land Office, to the original grantee or his legal representatives, and in defining the term "legal representatives," said:

"Legal representatives," as used in the formula in the Land Office that the patent certificate, and even the patent, should issue to the original grantee or his legal representatives, means representatives of the original grantee in the land by contract, such as assignees or grantees, as well as by operation of law.

In the *Mutual Life Insurance Company v. Armstrong* (117 U. S., 591, 597), the Supreme Court said:

The term "legal representatives" is not necessarily restricted to the personal representative of one deceased, but is sufficiently broad to cover all persons who with respect to the property stand in his place and represent his interests, whether transferred to them by his act or by operation of law. Hence it is held that the phrase "legal representatives," in a life insurance policy made payable to the insured or his legal representatives, included the assignee of the insured, as well as executors and administrators.

A number of other cases might be cited wherein the courts have held that a "legal representative" may mean any person or corporation taking the beneficial interest in property, real or personal, and includes all persons who stand in place or represent the interests

of another either by his act during the lifetime of the assignor or by operation of law after his death. (See 16 Miss., 234, 276).

It is evident that if Wheeler (the original entryman) had applied for repayment he would be compelled under law, before the question of his personal right to repayment would even be considered, to definitely show that he had indemnified his assignee or perfected title in him through another source, or produce a full reconveyance to himself from the legal grantee or assignee. (39 L. D., 141, par. 13.)

This, in itself, is a recognition by the Department that a *bona fide* assignee, recognized as such under the public land laws, is entitled either to reimbursement or repayment, as the case may be. The assignee's equitable claim and his legal right to repayment are not only recognized but likewise protected by the Department.

It is not deemed equitable, nor in accord with the purpose and intent of the repayment act of March 26, 1908, *supra*, to technically interpret the term "legal representatives" or restrict its meaning to merely heirs, executors and administrators, so as to prevent that being done which ought to be done, and by such technical interpretation deny repayment in cases that appear to be authorized thereunder. Further, being convinced of the fact that in so far as the land assigned, that is the title thereto, is concerned, the assignee is recognized by law as the legal representative of the assignor, no good and sufficient reason appears why a qualified assignee on a repayment proceeding arising from and directly connected with the same land, should not likewise be considered the "legal representative" of the assignor with respect to the right to repayment in connection therewith. The Department concludes that the broader interpretation of the term "legal representatives" should be adhered to, as defined in the decisions of the Supreme Court, hereinbefore cited, so as to include assignees.

It is, therefore, held that a qualified assignee is a legal representative of the assignor within the meaning of the act of March 26, 1908, *supra*, and entitled to repayment thereunder provided it be conclusively shown by satisfactory evidence that the assignee has not been indemnified by the assignor for failure of title, as required in similar cases under the act of June 16, 1880, per instructions contained in paragraph 12 of the general repayment circular of July 23, 1910 (39 L. D., 141).

In this case final certificate was withheld upon protest by the Chief of Field Division. The Department by decision on appeal, rendered December 9, 1909, determined that the rights of Mary E. Orndorff were superior to those of the Clear Water Timber Company and finally held that its entry acquired by assignment must fail. This

action was in effect tantamount to a final rejection of their entry. Under no consideration can it be held from the evidence before the Department in this case that the relinquishment wrongfully tendered through trickery and deceit by Wheeler, the original entryman, was a voluntary act on the part of the Clear Water Timber Company. On the contrary, it was done unknown to it and adverse to its interests. No fraud or attempted fraud was charged or practiced by the applicant for repayment in connection with its endeavor to acquire title to the land involved. The relinquishment not being voluntary, repayment is authorized under the act of March 26, 1908, *supra*. (See case of Dorathy Ditmar, 43 L. D., 104.)

The decision appealed from is accordingly hereby reversed and the case remanded for appropriate action hereunder.

### OLIVER C. KELLER.

*Decided January 15, 1916.*

#### ALLOTMENTS ON RESERVATIONS AND ON PUBLIC DOMAIN.

The right to allotment on an Indian reservation is limited to members of the tribe in being at the date of the closing of the allotment rolls; but the closing of the rolls does not necessarily bar applicants from taking allotments on the public domain under the 4th section of the act of February 8, 1887, if they otherwise possess the qualifications prescribed by that section.

#### ALLOTMENTS TO MINOR CHILDREN ON PUBLIC DOMAIN.

The minor children of an Indian woman and a white man are entitled to allotment under section 4 of the act of February 8, 1887, only where the mother is qualified and files application for allotment in her own right and makes settlement under that section, and she alone is authorized to make application in their behalf.

JONES, *First Assistant Secretary*:

Appeal has been filed from decision of the Commissioner of the General Land Office, dated May 6, 1915, holding for rejection applications made by Oliver C. Keller, on behalf of his minor children Evelyn Corrine Keller, Oliver C. Keller, Jr., and Virginia C. Keller, as Indians of the Nez Perce tribe, for the SW.  $\frac{1}{4}$ , Sec 9, SE.  $\frac{1}{4}$ , Sec. 8, and NE.  $\frac{1}{4}$ , Sec. 8, respectively, T. 30 N., R. 11 E., Havre, Montana, under the fourth section of the act of February 8, 1887 (24 Stat., 388), as amended.

The action of the General Land Office was based on report of the Indian Office recommending that the applications be rejected for the reason that these children, "while entitled to recognition as Nez Perce Indians, having been born subsequent to April 13, 1889, the date of the President's order granting authority for the allotment of the Nez Perce Indian lands, are not, therefore, entitled to receive allotments on the public domain."

The fourth section of the act of 1887 provides as follows:

That where an Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations.

The quantity of land to which an Indian is entitled under the foregoing section is regulated by the clause "in quantities and manner as provided in this act for Indians residing upon reservations." The quantities of land to which reservation Indians are entitled under the provisions of the act are specified in section 1 thereof, the fourth clause of which is as follows:

to each other single person under eighteen years now living or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, etc.

The act of February 8, 1887, was amended by the act of February 28, 1891 (26 Stat., 794), section 4 of the amendatory act being as follows:

That where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children, in quantities and manner as provided in the foregoing section of this amending act for Indians residing upon reservations.

It will be seen that the amended section differs from the original only in the first part thereof where it provides "That where any Indian entitled to allotment under *existing laws* shall make settlement," etc.

By the act of June 25, 1910 (36 Stat., 855), sections 1 and 4 of the act of February 8, 1887, were again amended and the same language appears in the first part of section 4 of the amendatory act.

The practice of the Indian Office has been to deny the right of allotment on the public domain under the fourth section to Indians born after the closing of the rolls of the tribe with which membership is claimed, the same as to allotments of reservation lands under the first section. This practice, apparently, is based upon departmental decisions found in 12 L. D., 168, and 15 L. D., 287, and the construction placed by that office upon the language used in the fourth section of the amendatory act of February 28, 1891, to-wit, that where any Indian entitled to allotment under existing laws shall make settlement, etc. The departmental decisions referred to, however, involved allotments of tribal or reservation lands, and that the rule announced therein is the proper one in respect to such allotments there can be no doubt, for the reason that where Congress has di-

rected the allotment in severalty of the lands embraced in an Indian reservation and thereafter the disposal of the surplus lands, it is necessarily contemplated that there must come a time or a date must be fixed for closing the rolls and denying the right of persons born thereafter to allotments. Otherwise, the intent of the law in so far as it provides for a disposal of the surplus lands would be defeated. But the same rule is not strictly applicable to allotments on the public domain under the fourth section of the General Allotment Act. Even under that section there must come a time when after-born children are not entitled to allotments on the public domain, but the time is not to be fixed with reference to the closing of the allotment rolls of the tribe in which membership is claimed. That time, in respect to allotments on behalf of minor children under the fourth section, is the date of filing an application by the parent for an allotment to himself under said section. This is the construction that was placed upon the fourth section soon after the passage of the act of 1887 in the regulations of September 17, 1887, as follows:

The fourth clause above cited, "to each other single person under eighteen years now living, etc." will be construed to embrace children who may be born prior to the date of the parents' application for an allotment.

Therefore, at the time the parent applies for an allotment for himself under said section, he is also entitled to select allotments on behalf of his minor children then in being. He is not entitled to select allotments on behalf of children that may be born thereafter, and this for the further reason that the act of 1887 in section 6 thereof declares every Indian to whom an allotment has been made under the provisions of said act to be a citizen of the United States. Hence, children born after the parent has been allotted have the status of citizens and not Indians, and are therefore not entitled to allotments under the fourth section.

But, as stated, the mere "closing the rolls" as to reservation lands does not necessarily bar allotments under the fourth section, provided the applicant otherwise possesses the qualifications prescribed by that section. There are two classes of Indians provided for in said section; those not residing upon a reservation, and those for whose tribe no reservation has been provided by treaty, act of Congress, or Executive order. It is plain that as to the second class there could be no such thing as "closing the rolls" in the matter of allotments out of reservation lands, so that as to that class the test required by the practice of the Indian Office under the fourth section could never be applied to them.

The fourth section of the act of 1887 provides for an allotment on the public domain to "any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or Executive order"; whereas the amendatory acts

provide for an allotment on the public domain to "any Indian entitled to allotment under existing laws." This difference in language is not regarded as either material or significant. There is, apparently, no good reason for taking the changed expression in its literal sense; that is, if an Indian is not entitled to an allotment of tribal or reservation lands, he is also not entitled to an allotment on the public domain. Such an interpretation would bar an Indian from an allotment on the public domain "for whose tribe no reservation has been provided." It is entirely justified to construe the language in the amendatory acts in connection with or as taking the place of the old expression, and as meaning nothing more nor less than was meant by the language used in the fourth section of the original act.

While in accordance with the foregoing the applicants herein are not necessarily barred from taking fourth section allotments, by reason of the fact that they were born after the closing of the allotment rolls of their tribe, nevertheless the facts are such that they are not entitled to such allotments because of the absence of conditions requisite under said section.

To entitle one to an allotment under the fourth section, it must appear that he is a recognized member of an Indian tribe or is entitled to be so recognized (35 L. D., 549; and 42 L. D., 489). The mother of these minor children, Lily Complainville Keller, is an enrolled member of the Nez Perce tribe of Indians. Her name appears on a schedule of allottees of Nez Perce tribal or reservation lands, approved by the Department October 10, 1895. These children were all born subsequent to that date. The husband of Lily Complainville Keller, Oliver C. Keller, the father of these children, is a white man, a citizen of the United States, and an entryman of public lands under the general homestead law. Therefore, the only right said children can have to allotments on the public domain under the fourth section is through their mother by reason of her membership in the Indian tribe. This section requires that an applicant for allotment thereunder shall make settlement upon the land he desires to have allotted to him, and also authorizes such an Indian settler, upon application to have allotments made to his minor children. This authority, however, extends only to those cases where the parent has himself made settlement upon the public domain under said section (40 L. D., 148). The mother in this case has not applied for an allotment under said section for herself or for her children; has not made settlement thereunder on the public domain; and by reason of her having received an allotment out of the reservation lands of her tribe, is not entitled to an allotment on the public domain under the fourth section. That section was intended to provide allotments on the public domain for those Indians who had

not received allotments out of tribal or reservation lands. The law only permits one entitled himself under the fourth section to take allotments thereunder on behalf of his minor children (41 L. D., 626). Then, too, by reason of her allotment of land on the reservation of her tribe, the mother thereby became, under the sixth section of the General Allotment Act, a citizen of the United States. Her children, born subsequent to her said allotment, were therefore born to citizenship. The benefits conferred by the fourth section are upon Indians as distinguished from citizens. Furthermore, as stated, the mother married a white man, a citizen of the United States, and so far as the record shows is living with her husband. While the fact of marriage by an Indian woman to a white man, a citizen of the United States, may not necessarily deprive her of the right to an allotment under the fourth section, yet by assuming such relation, even though she might otherwise be qualified, she is thereby rendered incapable of complying with the terms and conditions of said section, as clearly shown by the facts of this case (43 L. D., 149).

The applications for these minor children were made by the father in their behalf. He is not an Indian; is not himself entitled to an allotment under the fourth section; and never made settlement on the public domain under said section. Therefore, he was not qualified to make application for allotments on behalf of these minor children (43 L. D., 149). A settler on the public domain under the general homestead law is not a settler thereon within the meaning of the fourth section. Neither is an Indian woman, who is living on the public domain with her husband, who is a settler thereon under the general homestead law, a settler within the meaning of said section; nor is she entitled to make allotment selections thereunder for her minor children (43 L. D., 504).

The decision of the General Land Office, holding the applications herein for rejection, is hereby affirmed.

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### VOIGT v. BRUCE.

*Decided January 15, 1916.*

#### TURTLE MOUNTAIN INDIANS—ALLOTMENT ON PUBLIC DOMAIN.

To entitle a member of the Turtle Mountain band of Chippewa Indians to an allotment selection on the public domain under the act of April 21, 1904, it must affirmatively appear that the applicant was in being October 8, 1904, the date the act of April 21, 1904, was ratified and accepted by the Indians.

#### CONFLICTING INSTRUCTIONS RECALLED AND VACATED.

Departmental instructions of September 30, 1907, 36 L. D., 105, recalled and vacated.

JONES, *First Assistant Secretary*:

Peter J. Voight has appealed from decision of March 5, 1914, rejecting his application, filed January 22, 1914, to contest Indian allotment selection made in 1910 by Alexander Bruce, for his minor child, Josephine Bruce, covering the SE.  $\frac{1}{4}$  of Sec. 26, T. 36 N., R. 49 E., Glasgow, Montana, under article 6 of an agreement with the Turtle Mountain band of Chippewa Indians, as amended and ratified by the act of April 21, 1904 (33 Stat., 189, 194).

It is alleged in the contest affidavit that the land covered by this selection was not properly marked; that no residence had been established by the Indian; and that, so far as could be ascertained, she is a Canadian Cree Indian.

It appears that the survey of the township in which this land is situated was accepted by the General Land Office in November, 1913, and, while the approved plat was not filed, it was considered by that office that the completion of the survey in the field was sufficient to protect the Indians' rights against subsequent settlement and other claims. The act of April 21, 1904, makes no requirement as to residence, and the allowance of this selection was based on a certificate from the Indian superintendent that this child is a duly enrolled member of the Turtle Mountain band of Chippewa Indians.

Upon receipt of this appeal the Department referred the case, together with several other similar cases, to the Indian Office for investigation in the field and examination of the records of that office and at the Indian Agency to determine whether or not the persons for whom allotment selections had been made are, in fact, members of the Turtle Mountain band of Chippewa Indians, or whether, as alleged, they are Canadian Cree Indians. The Indian Office has now transmitted a report from the former Superintendent who states, among other things—

In all the above cases where parties who have made applications to contest allotment selections filed in T. 36 N., R. 49 E., M. M., as above referred to, the claims are founded upon hearsay and talk, and not upon any evidence whatever. In every instance, the allotment selections have been made by members of the Turtle Mountain band of Chippewas, who for years prior to the filing of these allotment selections, received all benefits under the treaty and whose enrollments are well known and were investigated by the McCumber Commission, authorized by Congress to enroll the members of the Turtle Mountain band of Chippewa Indians and make a treaty with them.

There is no question whatever as to their right as Indians in the United States, and the question of that right has been investigated not once, but many times, and the seal of Congress placed upon the rights by the ratification of the treaty made to the Turtle Mountain band of Chippewa Indians by the McCumber Commission in 1892, which was ratified on April 21, 1904 (33 Stat., 189, 194).

The Indian Office records show that the names of a number of these Indians whose allotment selections have been contested are on

the roll prepared by the McCumber Commission, and that those whose names do not appear on said roll are children of parents who are enrolled with this band. It is therefore clear, from all the facts, that the action of the Commissioner of the General Land Office in rejecting the application to contest this allotment selection for the reasons alleged therein was proper, and the same is hereby affirmed.

Notwithstanding the fact that this allotment selection is not subject to cancellation on the grounds alleged in the contest affidavit, it nevertheless appears that for other reasons this minor child is not entitled to select land on the public domain under the act of April 21, 1904. The record shows that at the time allotment selection was filed, February 26, 1910, Josephine Bruce was an infant and, therefore, presumably not in being at the time of the passage of the act of April 21, 1904. In construing said act, it was held in instructions of September 30, 1907, syllabus (36 L. D., 105):

The act of April 21, 1904, does not limit the time within which members of the Turtle Mountain band of Chippewa Indians who may be unable to secure land upon their ceded reservation may take a homestead from any vacant public land belonging to the United States, as provided in said act, and the Department has no authority to fix a date after which children born into the band shall not be entitled to such right.

The Department is now convinced, however, upon further consideration, that the holding in the above instructions is an erroneous construction of the law, and that children born to members of this band subsequent to the time the act of April 21, 1904, became effective, constitute a class not contemplated by said act.

Under the provisions of the act of July 13, 1892 (27 Stat., 120, 139), commissioners were appointed to "negotiate with the Turtle Mountain band of Chippewa Indians in North Dakota for the cession and relinquishment to the United States of whatever right or interest they may have in and to any and all land in said State to which they claim title." It was provided that "said Commissioners shall also report to the Secretary of the Interior the number of the said Chippewa Indians and the number of mixed bloods, if any, who are entitled to consideration by the United States Government."

In accordance with said act of July 13, 1892, an agreement was entered into October 2, 1892, but the same was not ratified by Congress until April 21, 1904. In article 2 of the agreement, as ratified, the Turtle Mountain band of Chippewa Indians ceded to the United States "all the claims, estate, right, title, and interest" of said band or any of them as members thereof, "in and to all lands, tenements and hereditaments" in the State of North Dakota, excepting a tract, consisting of two townships, set apart by Executive order of June 3, 1884, and occupied by said Indians as a reservation. It is provided in article 3 that the reservation should be held as the com-

mon property of the band, and further—"and it is agreed that the United States shall, as soon as it can conveniently be done, cause the land hereby reserved and held for the use of the Turtle Mountain band of Chippewa Indians to be surveyed, as public lands are surveyed, for the purpose of enabling such Indians as desire to take homesteads, and the selections shall be so made as to include in each case, so far as possible, the residence and improvements of the Indians making selection." It is also provided—"and lands in said reservation which shall not be taken by said Indians within such time as may be fixed by the Secretary of the Interior after the ratification of this agreement may be opened for settlement as other public lands." In article 4 the United States agrees, among other things, to pay the Indians the sum of one million dollars for the lands ceded. Article 6 reads as follows:

All members of the Turtle Mountain band of Chippewa Indians who may be unable to secure land upon the reservation above ceded may take homesteads upon any vacant land belonging to the United States without charge, and shall continue to hold and be entitled to such share in all tribal funds, annuities, or other property, the same as if located on the reservation: *Provided*, That such right of alternate selection of homesteads shall not be alienated or represented by power of attorney.

It was necessary, under the provisions of the act of April 21, 1904, that the amended agreement should be submitted to the Indians for acceptance, which was done and the same was ratified and accepted by them October 8, 1904.

In accordance with the provisions of the act of July 13, 1892, the commissioners appointed thereunder took a census of the Turtle Mountain band of Chippewa Indians in 1892, and certified that the list of persons submitted constituted said band and were "entitled to consideration by the United States" (Ex. Doc. 229, 52d Cong., 2d Sess.). Before calling a council of the Indians to ratify and accept the amended agreement, the Superintendent was directed in August, 1904, to make a revised enrollment of the band, taking the report of the commissioners of 1892 as a basis therefor. No additions to the roll after that date were to be accepted other than by birth, and such persons as seemed to have discontinued or forfeited their tribal rights by abandonment were to be eliminated (An. Rept. Com. Ind. Afs., 1905, p. 281). The Superintendent was also directed to strike from the census of 1892 the names of persons who had since died (An. Rept. Com. Ind. Afs., 1906, p. 153). The roll as thus revised constituted the membership of the band at the time the amended agreement was accepted and ratified by the Indians on October 8, 1904. All persons whose names appeared on that roll were entitled to take lands either on the reservation or on the public domain.

Apparently no time was ever fixed by the Secretary of the Interior in accordance with the provisions of article 3 within which lands in the reservation were to be taken by the individual Indians, for the reason that on account of the limited area of such reservation it was early determined that the whole of it would be exhausted by allotments in severalty. The provision in article 3, however, that lands in the reservation not taken by the Indians "may be opened for settlement as other public lands," was, in substance, a cession of the reservation to the United States subject only to the right of the Indians to take homesteads thereon, it being further agreed that members of the band who were unable to secure lands on the reservation might select on the public domain.

Article 6 of the amended agreement, taken in connection with article 3, which provides that the reservation is to be held as the common property of the band, and the further provision in article 3 that lands in said reservation not taken by the Indians may be opened for settlement as other public lands, clearly indicates that in providing for selections on the public domain in article 6, the agreement had in contemplation only those Indians in being at that time. The situation was this. The Indians had a reservation which they held in common but it was of limited area, so after providing for its division in severalty it was agreed that those Indians who were unable to secure lands on the reservation could select them on the public domain and that without charge, in order to put all members of the band as nearly as possible on an equality. The revised roll of the band showed who were the intended beneficiaries under the law, both as to reservation and public lands.

The privilege granted these Indians to take lands on the public domain was part of the consideration for the cession. In addition to the payment to them of one million dollars for such cession, those members of the band who were unable to secure land on their reservation were allowed to select lands on the public domain. It is not reasonable to suppose that it was intended that this consideration was to be increased indefinitely by additions to the membership by birth or otherwise. On the contrary, the more reasonable view is that it was intended that this form of consideration should be limited to selections by those members of the band in existence at the time of the enactment of the law and who negotiated the agreement. In other words, that the beneficiaries of the consideration were to be limited, as nearly as possible, to the time when the consideration was agreed upon. The membership of the band at that time constituted the basis for determining the beneficiaries of the consideration.

The provisions of the agreement, as amended, are very similar to those of the fourth section of the General Allotment Act of Febru-

ary 8, 1887 (24 Stat., 388), except that under the agreement no settlement is required. It has been the practice of the Indian Office to deny the right of allotment on the public domain under said section to Indians born after the closing of the allotment rolls of the tribe with which membership is claimed. Other similar acts have been construed in the same manner. Thus the act of March 2, 1889 (25 Stat., 1013), provided as follows:

That the Secretary of the Interior is hereby authorized and directed, within ninety days from and after the passage of this act, to cause to be allotted to each and every member of the said Confederate Wea, Peoria, Kaskaskia, and Piankeshaw tribes of Indians, and the Western Miami tribe of Indians, upon lists to be furnished him by the chiefs of said tribes, duly approved by them, and subject to the approval of the Secretary of the Interior, an allotment of lands not to exceed two hundred acres, out of their common reserve, to each persons entitled thereto by reason of their being members of said tribes by birth or adoption.

And further—

After the allotments herein provided for shall have been completed, the residue of the lands, if any, not allotted, shall be held in common under present title by said united Peorias and Miamis in the proportion that the residue, if any, of each of the said allotments shall bear to the other.

While this act is confined to reservation allotments, yet the principle is the same as that involved here, as it has been held that a homestead selection on the public domain by a Turtle Mountain Indian, under article 6 of the agreement ratified by the act of 1904, is to be treated as a selection under said act the same as if land had been taken on the reservation. (19 Ops. Asst. Atty. Gen., 40, 46-7.) In construing the above act of March 2, 1889 (12 L. D., 168), it was held:

The authority to make allotments under said act terminates when the Secretary has approved the lists, furnished him by the chiefs, containing the names of all members of the tribe then in existence who are entitled to allotments.

It was concluded in that case that the act might be read as though the time limit was not in it; that even though allotments were not actually made until after the expiration of ninety days, they were nevertheless properly made, the language of the act in that respect being merely directory. But on the question of allotting after-born children, it was said:

The above provisions, and the plain language in which they are expressed, make it clear to me that Congress did not intend the provision relating to allotments to be a continuing one, as long as any land was left to divide. It was reasonably certain, in the course of time and nature, that other marriages of whites with members of the tribes would occur, and consequently that other adoptions therein would take place, also that other children would be born. If it had been intended that every time a new member was adopted into the

tribe or another child born therein that another allotment should be made, it would have been easy to say so, or at least to have left the surplus in a condition that an implication to that effect would have been justified.

Where Congress has directed allotments and thereafter a disposal of the surplus lands of an Indian reservation, necessarily there must be some date beyond which further allotments are not authorized. Otherwise, allotments to children subsequently born to members of the tribe or band would be a continuous performance, and the intention of the law, in so far as it contemplates disposal of surplus lands as other public lands are disposed of, would be defeated. Article 6 of the agreement as ratified by the act of April 21, 1904, is clearly susceptible of the construction that it was the intention thereby to fix a time when the number of persons entitled to land on the public domain should be ended and after which no additions should be made. It is well known that statutes are seldom framed with such minute particularity as to give directions for every detail which may be involved in their practical application.

The instructions of September 30, 1907 (36 L. D., 105), are hereby recalled and vacated. In order to entitle a member of the Turtle Mountain band of Chippewa Indians to an allotment selection on the public domain under the act of April 21, 1904, it must affirmatively appear that the applicant was in being October 8, 1904, the date the act of April 21, 1904, was ratified and accepted by the Indians.

As it does not affirmatively appear that the applicant herein, Josephine Bruce, was born prior to the date above named, the selection made in her behalf will be canceled.

## COST OF CERTIFIED COPIES OF RECORDS AND PAPERS.

### CIRCULAR

[No. 456]

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

*Washington, D. C., January 28, 1916.*

1. The schedule of fees for the preparation and delivery of certified copies of records and papers set forth in Circular No. 180 (41 L. D., 333) is amended to read as follows:

- (a) For written copies, 15 cents for each 100 words.
- (b) For photographic copies, 15 cents for each sheet not exceeding 11½ by 15 inches; for larger sizes, a proportionate cost, not to exceed 40 cents per sheet.
- (c) For photolithographic copies, 25 cents each.
- (d) For tracings or blue prints, a sum equal to the cost of preparing the same.

(e) For certifying a copy and affixing thereto the seal of the officer certifying, 25 cents.

(f) For each certified copy of any printed order or regulation intended for gratuitous distribution, 25 cents.

2. To the foregoing fees, when certified copies are ordered, must be added 10 cents for an internal-revenue stamp which must be affixed to each certificate, under the provisions of the act of October 22, 1914 (38 Stat., 754), as extended on December 17, 1915, by Public Resolution No. 2.

3. The cost of a certified photographic copy of a patent is ordinarily 50 cents, and of a typewritten copy 95 cents, which includes the cost of the 10-cent internal-revenue stamp.

4. A separate certificate and seal must be attached to each certified copy of a patent, as well as to each certified copy of a township plat; but where there have been two or more surveys of a township, and a copy of each plat of survey is desired, all of such related plats may be certified under one certificate and seal.

5. Those who prefer may, instead of forwarding a 10-cent internal-revenue stamp for each certificate, send the cost of the stamps.

6. All fees for certified copies must be paid in advance. In any case where the amount remitted is insufficient, the remitter will be promptly advised concerning the deficiency.

7. Remittances may be effected by means of New York exchange, certified check, cashier's check, or post-office money order.

Very respectfully,

CLAY TALLMAN, *Commissioner*.

Approved:

ANDRIEUS A. JONES,

*First Assistant Secretary.*

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### CHARLES T. WRIGHT ET AL.

*Decided January 29, 1916.*

#### CHIPPEWA INDIANS—MEMBERSHIP ROLL—AUTHORITY OF SECRETARY OF INTERIOR.

The census of Chippewa Indians in the State of Minnesota made by the commissioners appointed under the act of January 14, 1889, must be accepted as affording an authoritative list of the names of persons entitled to be considered members of the several tribes at the time it was made and entitled to the benefits provided by said act, and the Secretary of the Interior has no authority to eliminate from the rolls any name placed thereon by the commission for any cause arising prior to such enrollment.

JONES, *First Assistant Secretary*:

Complaint having been made on the part of certain alleged full-blood Indians of the White Earth Reservation that there were names on the rolls of that band not properly there, notices were sent to 86

persons, thus indicated as being improperly enrolled, under date of November 25, 1911, signed by the Commissioner of Indian Affairs and approved by the First Assistant Secretary of the Interior. These notices recited the allegation that the parties were unlawfully upon the list of Minnesota Chippewa Indians, not being originally members of any Minnesota tribe or band by birth, and not having become so by proper or legal adoption. The parties addressed were required to show cause why their names should not be stricken from the rolls, their allotments canceled, and the amounts which they had received in the way of annuities and other payments returned to the tribe. Such notices further advised them that they had been suspended from all of such lists and from participating in any payments, annuities, or other benefits.

Answers were made to these notices, in some instances, in person, and, in others, by attorneys, all denying the charge, and some, if not all, denying the jurisdiction in the Department to strike from the rolls any name placed thereon by the commission, acting under the act of January 14, 1889 (25 Stat., 642). After these answers came in, a representative of the Department was sent to the reservation to make an investigation. He required a formal complaint to be made, over the signature of full-blood members of the tribe. This was subsequently done; such complaint being verified, and containing substantially the charges made in the notice of November 25, 1911, though with considerable elaboration. Copies of the complaint were served upon the 86 persons to whom notices had formerly been sent, who filed answers denying the charges, and again asserting lack of jurisdiction in the Secretary of the Interior. Subsequently, voluminous testimony was taken by the investigator.

It was decided to submit the matter to the Court of Claims and, with the acquiescence of all the parties interested, this was done, by Department letter of February 28, 1915, reference being made to section 148 of the Judiciary Act of March 3, 1911 (36 Stat., 1087, 1137), as affording authority for such action. The court was advised that the record was submitted for "findings as to the matters of fact and your opinion as to matters of law, together with your conclusion thereon, for the use and benefit of this Department in the premises." The court held, in substance, that it had no jurisdiction to render advisory opinions in such matters. The request was thereupon amended, and the court rendered final decision under date of December 21, 1914, wherein, after discussing at some length the question of jurisdiction, concluded that it had no jurisdiction of said claim or matter, and returned the record to the Department.

Elaborate briefs have been filed before the Department, discussing the jurisdiction of the Secretary, as well as the merits of the matter. Oral arguments have also been heard. The question of jurisdic-

tion has been presented and insisted upon at various stages of the proceedings, and must be considered and determined, before any consideration need be given the merits.

It is not necessary to cite the various treaties and their provisions to which the Chippewa Indians were parties, entered into from 1785 down to 1867. For the present, at least, it will be only necessary to consider the act of January 14, 1889. That act provided, in section 1, for a commission, to be appointed by the President, to negotiate with the different bands or tribes of Chippewa Indians in Minnesota, for the cession and relinquishment, in writing, of their title and interest in and to all the reservations of said Indians in that State, except the White Earth and Red Lake reservations, and all of these two reservations not required to make and fill allotments provided for by that and other existing acts.

A roll was to be made by said commission, the provisions therefor reading:

And for the purpose of ascertaining whether the proper number of Indians yield and give their assent as aforesaid, and for the purpose of making the allotments and payments hereinafter mentioned, the said commissioners shall, while engaged in securing such cession and relinquishment as aforesaid and before completing the same, make an accurate census of each tribe or band, classifying them into male and female adults, and male and female minors; and the minors into those who are orphans and those who are not orphans, giving the exact numbers of each class, and making such census in duplicate lists, one of which shall be filed with the Secretary of the Interior, and the other with the official head of the band or tribe; and the acceptance and approval of such cession and relinquishment by the President of the United States shall, be deemed full and ample proof of the assent of the Indians, and shall operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided.

Section 3 of the said act provided that as soon as the census should be taken and the cession obtained and approved, as specified in section 1, all of said Indians, except those on Red Lake Reservation, should be removed to the White Earth Reservation, and be allotted lands in severalty.

This was to be done under the direction of said commissioners. Section 4 provided for the survey and classification of the lands into pine lands and agricultural lands. It is not necessary now to notice the provisions of the other sections of said act.

The commission provided for was duly appointed and proceeded with the work confided to them. A report of their work is to be found in H. R. Ex. Doc. No. 247, 51st Congress, 1st Session. Agreements were secured from each tribe or band, which were approved by the President March 4, 1890. Census rolls of the several tribes were compiled, upon which appear the names of all the 86 persons then living, and the names of the ancestors of those not then in being.

The report of the commission shows also that the Indians had part in the making of the rolls; and were given full opportunity to object to any name thereon.

The work of removing the Indians to White Earth Reservation and of making allotments to them was proceeded with, but not yet completed, when, in the act of June 10, 1896 (29 Stat., 321, 326), it was provided that the duties imposed upon the three commissioners should, from and after that time, be performed by one commissioner, to be designated by the Secretary of the Interior. The act of June 27, 1902 (32 Stat., 400), amended sections 4, 5 and 7 of the act of 1889, but did not change section 1 of the said earlier act, except as provided in section 5 of the act of 1902, which reads:

That the Secretary of the Interior shall proceed as speedily as practicable to complete the allotments to the Indians, which allotments shall be completed before opening the agricultural lands to settlement.

The act of April 28, 1904 (33 Stat., 539), authorized the President to allot to each Chippewa Indian "now legally residing upon the White Earth Reservation," 160 acres of land, with the proviso that where any allotment of less than 160 acres had theretofore been made, the allottee should be allowed to take an additional allotment which, together with the land to be allotted, should not exceed 160 acres.

It is urged in support of the contention that the Secretary has no authority now to disturb the rolls made by said commission, or to eliminate therefrom any name for reasons existing at the time of such enrollment, because the making of said roll was confided to that commission as a special tribunal. It is urged, on the other hand, that the Secretary has jurisdiction, because of his general authority over Indian matters.

Section 441 of the Revised Statutes confides to the Secretary of the Interior the supervision of public business relating to various subjects, among which are "The Indians" and "The public lands, including mines." Section 463 provides that the Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, "have the management of all Indian affairs, and of all matters arising out of the Indian relations." The Secretary has jurisdiction over such matters in all cases where no other provision is made. The power of Congress to confide such supervision to other tribunals can not be questioned.

In reference to duties connected with the control and disposition of public lands, the Supreme Court laid down the rule in *Catholic Bishop of Nesqually v. Gibbon* (158 U. S. 155, 167), in the following words:

It may be laid down as a general rule that, in the absence of more specific provision to the contrary in respect to any particular grant of public land, its

administration falls wholly and absolutely within the jurisdiction of the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior. It is not necessary that with each grant there shall go a direction that its administration shall be under the authority of the land department. It falls there, unless there is express direction to the contrary.

The same words might well be used to define the authority of the Secretary of the Interior in respect to Indian matters. This is so well settled that it seems hardly necessary to cite authority in support of the proposition. It may be noted, however, that the subject was involved in *West v. Hitchcock* (205 U. S., 80). That case involved a question of membership in the Wichita and affiliated bands of Indians, in connection with making allotments, under the act of Congress approved March 2, 1895 (28 Stat., 876, 895-897), which act did not contain any specific direction as to the making of such rolls. The claimant there asserted membership by virtue of adoption. The court said:

The right is conferred upon members of the bands, but the ascertainment of membership is left wholly at large. No criteria of adoption are stated. The Secretary must have authority to decide on membership in a denial case, and if he has it in any case he has it in all.

After referring to sections 441 and 463 of the Revised Statutes, the court said:

The power of Congress is not doubted. The Indians have been treated as wards of the Nation. Some such supervision was necessary, and has been exercised. In the absence of special provisions, naturally, it would be exercised by the Indian Department.

All declarations that the Secretary of the Interior has authority, are coupled with the saving clause that there be no special provision conferring jurisdiction upon some other tribunal.

The contention that the Secretary has no jurisdiction to eliminate names from the list made by the commissioners appointed under the act of 1889, must be upon the assumption that their appointment did not constitute them a special tribunal for making such rolls. It is significant, in this connection, that the rolls were to be made not only to determine whether the necessary two-thirds of the Indians had given assent to the agreement, but also "for the purpose of making the allotments and estimates hereinafter mentioned." It would be difficult to find language more appropriate to specifically confer jurisdiction.

It is contended, however, that the approval given by the President in 1890 was confined to the written agreements secured by the commission from the Indians. That is true as to form. In fact, however, the census made and transmitted to the Interior Department by the commission, with its report, was accepted as correct by the President to the extent that he determined thereby that two-thirds

of the male adults of all the Chippewa Indians in Minnesota had signed the agreement for the cession of the Red Lake Reservation, and as to each other of the several reservations two-thirds of the male adults residing and belonging thereon had agreed to the cession.

It has been laid down as a universal principle that the acts of a tribunal given power or jurisdiction over a subject-matter are binding and valid as to that matter, and that the decision made or act done is final, unless an appeal is provided for or other revision is prescribed by law. This is stated in *United States v. Arredondo* (6th Pet. 691, 720-29):

It is a universal principle, that, where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject-matter; and individual rights will not be disturbed collaterally, for anything done in the exercise of that discretion, within the authority and power conferred. The only questions which can arise between an individual claiming a right under the acts done, and the public, or any person denying its validity, are power in the officer, and fraud in the party. All other questions are settled by the decision made or the act done by the tribunal or officer; whether executive (1 Cranch 170-1), legislative (4 Wheat. 423; 2 Pet. 412; 4 Ibid. 563), judicial (11 Mass. 227; 11 S. & R. 429, adopted in 2 Pet. 167-8), or special (20 Johns. 739-40; 2 Dow P. C. 521, &c.), unless an appeal is provided for, or other revision, by some appellate or supervisory tribunal, is prescribed by law.

There is nothing in the act of 1889, nor in any other act of Congress, providing for approval or supervision by the President or other officer or tribunal, or for appeal from the action, the Commissioner acting as a special tribunal under section 1 of the said act of 1889.

It is true, as stated in support of the jurisdiction of the Secretary of the Interior, that the work of the Commission was not completed at the date Congress enacted the law of June 10, 1896 (29 Stat., 325), but that fact is not of significance, because that did not attempt to confer jurisdiction or authority upon the Secretary of the Interior. There were portions of the work yet to be completed, such as the allotment of lands and removal of Indians from other reservations to White Earth. Neither had the work been completed at the date of the act of June 27, 1902, which directed the Secretary to complete the allotments to the Indians. This act amended several sections of the act of 1889, in respect of making allotments, etc., but did not make any change in section 1, nor confer upon the Secretary of the Interior any authority in respect of the matters provided for in that section, among which was the making of the census. Nor did the act of April 28, 1904 (33 Stat., 539), purport to make any additional provision respecting the census. Neither the fact of the passage of these laws, nor any provision contained in any one of them, supports

the contention of the protestants here. That it was not intended by these laws to affect in any manner the census which had been taken by the commission is further indicated by the provision in respect of this census that it should be made by the commissioners "while engaged in securing such cession and relinquishment as aforesaid before completing the same." In other words, the census was to be made before the commission should report the result of its work to the President.

The various decisions cited in support of the protest have been examined, but it is not necessary to comment upon them extensively. Considerable stress is laid upon the decision of the Circuit Court of Appeals in *Woodbury v. United States* (170 Fed. 302), and in *Oakes v. United States* (172 Fed. 305). These cases involved the right of individuals claiming allotments on the White Earth Reservation, but were brought under the act of February 6, 1901 (31 Stat., 760), specifically conferring jurisdiction upon the circuit courts of the United States, over suits involving the right of any person of Indian blood claiming to be entitled to an allotment of land under any law of Congress. These decisions are, therefore, not important in arriving at a conclusion as to the jurisdiction of the Secretary of the Interior in the matter now here. The decision by the Department in the case of *Minnie H. Sparks* (36 L. D., 234) is also referred to. In that case, the name of Minnie H. Sparks was placed upon the rolls by the Chippewa Commission, and she received annuities from the date of enrollment, for a period of ten years, when her name was dropped. By the decision referred to it was held that the dropping of her name because of nonresidence was unauthorized. This case, and the other referred to therein and quoted from (*Sloan family*), held that residence was a requisite to sustain the right to an allotment on the White Earth Reservation, but not to sustain a right to annuities.

In the case of *Nellie Lydick* (29 L. D., 408), it was held that the Secretary of the Interior had authority to add to these rolls, made under the act of 1889, any name which should be there. This was asserted without discussion of the question, and I am not inclined to accept this decision as controlling the matter now under consideration.

The law in question was under consideration in *Fairbanks v. United States* (223 U. S., 215). It was there held that children born after 1889 to parents whose names were on the roll prepared by the Commission were entitled to allotments of land on the White Earth Reservation. A fuller discussion of the matter, however, is found in the case of *Laroque v. United States*, decided November 8, 1915. The question there involved was as to the right to have an allotment

made in the name of an Indian who was enrolled in 1889, and who died before making application for allotment. It was contended that the census was to be accepted as finally determining who were to receive allotments. In the course of the discussion, the court said:

While the act directed that a census be made "for the purpose," among others "of making the allotments" contemplated, we think this means nothing more than that the census should serve as a preliminary guide in ascertaining to whom allotments should be made. There was no direction that it be treated as controlling—or that allotments be made to all whose names appear therein or only to them. The work of allotment could not be undertaken at once. The cession was not to be effective until approved by the President. Many of the Indians were to be removed from the ceded reservations to the White Earth Reservation, and much other work was required to prepare the way. So, it must have been contemplated that many changes would occur in the membership of the several bands through deaths and births before the allotments could be made. In *Fairbanks v. United States*, 223 U. S., 215, we held that children born into the bands after the census were entitled to allotments, although not listed in it, and we perceive no reason for giving the census any greater effect in this case than was given to it in that. No doubt it is to be accepted as an authorized listing of the members of the several bands who were living when it was made, but it has no bearing in cases like the present.

It is significant that the court noted the fact that the cessions were to be approved by the President, but did not intimate that anything in the act provided for approval of the census to make it authoritative. This decision is authority for the conclusion that the census made by that commission is to be accepted as affording an authoritative list of the names to be considered as members of the several tribes at the time it was made, and entitled to the benefits provided by said act of 1889. The jurisdiction which the Secretary has in the premises is to determine the persons named in said census who have since died, or otherwise since forfeited their rights, and also the names of those who have since been born.

I am of the opinion that the Secretary of the Interior has no authority to eliminate from the rolls any name placed thereon by the commission, for any cause arising before such enrollment; and that the order of November 25, 1911, approved November 27, suspending from participation in any payments, annuities, or other benefits, the parties complained of, was beyond the authority of the Commissioner of Indian Affairs and the Secretary of the Interior.

The rules to show cause are hereby discharged, the orders of suspension are hereby rescinded, and the proceedings against the parties named are hereby dismissed. The Commissioner of Indian Affairs will take such steps as may be proper and appropriate, treating said order and rule to show cause as if never issued.

**FRANK O. HORTON.***Decided January 29, 1916.***SECOND APPLICATION UNDER TIMBER AND STONE ACT.**

As a general rule the filing of an application under the timber and stone act exhausts the applicant's right; but where failure to consummate the first application by purchase is due to no fault or negligence on the part of the applicant, the filing of a second application under that act may be permitted.

*JONES, First Assistant Secretary:*

Frank O. Horton has appealed from the decision of the Commissioner of the General Land Office of May 1, 1915, rejecting his second timber and stone application filed February 13, 1915, for lot 3, and E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 19, T. 52 N., R. 83 W., 6th P. M., Buffalo, Wyoming, land district.

It appears that Horton on March 9, 1914, filed timber and stone application for this land and that this application expired by limitation under the provisions of paragraph 19, of the regulations approved January 2, 1914 (43 L. D., 37), no appraisal having been made and the applicant having failed to purchase the land under the rights given him by the provisions of said paragraph. The Commissioner held that applicant's rights were exhausted under his first application and for that reason rejected his second application.

The present application is made under the provisions of the act of June 3, 1878 (20 Stat., 89), and acts amendatory thereof. This act provides for the sale of lands chiefly valuable for timber and stone in quantities not exceeding 160 acres to any one person or association of persons. Under section 2 of the act it is required that any person desiring to avail himself of the provisions thereof shall file with the register of the proper land district a sworn statement setting forth among other things:

That deponent has made no other application under this act.

Upon the construction of this provision depends the right of the applicant to file his second application.

The preemption laws contain similar provisions. Section 2261, Revised Statutes, provides:

No person shall be entitled to more than one preemption right by virtue of the provisions of section 2259; nor where a party has filed his declaration of intention to claim the benefits of such provisions, for one tract of land, shall he file, at any future time, a second declaration for another tract.

The instructions issued by the General Land Office June 17, 1875 (Copp's Public Land Laws, 1875, p. 179), construed the above section as follows:

Section 2261 of the Revised Statutes prohibits the second filing of a declaratory statement by any preemptor qualified at the date of his first filing where said filing has been, in all respects, legal. Where the first filing, however, is illegal from any cause, he has the right to make a second and legal filing.

In the case of *French v. Tatro* (2 C. L. L., 585), the Department had occasion to comment on this construction of the above section of the Revised Statutes, and stated that a second filing would not be allowed where the first was known to be illegal by the applicant. It was held in that case, however, that a second filing should be allowed where the failure of the first was the result of no fault on the part of the settler; and that cases may arise where the second filing should be allowed but the equities must be manifest.

In the same circular of instructions above mentioned it is stated (page 184) :

As the law allows but one homestead privilege, a settler relinquishing or abandoning his claim can not thereafter make a second entry; but where, a party having made one entry, it is canceled as invalid, for some other reason, he is not thereby debarred from entering again.

In the circular of December 15, 1882 (1 L. D., 649), regarding soldiers' homestead declaratory statements, the local officers were instructed that where the settler was unable, for certain reasons therein specified, to make entry within the time prescribed from the date of selection, and an adverse right is admitted, an entry might be allowed upon another tract.

Second entries have been allowed where the failure to perfect title under the first is not attributable to the fault or negligence of the claimant. *George Thorniley* (13 L. D., 177); *Edward C. Clement* (10 L. D., 338); *Frank N. Page* (10 L. D., 17).

In the case of *George F. Brice* (37 L. D., 145) the Department had under consideration a second application filed under the timber and stone act which was rejected by decision of September 8, 1908; but on motion for rehearing it was held, June 4, 1909, that the right of the applicant had not been exhausted under his first application.

It is apparent from the foregoing that the mere filing of an application under the timber and stone law does not in itself exhaust the privilege of purchasing thereunder. It is intended by the act to accord to any qualified person or association of persons the privilege of purchasing a tract of land not exceeding 160 acres chiefly valuable for timber or stone and it is the settled holding of this Department that where application is filed as required by the statute and no obstacle to the purchase is interposed by the Government, the applicant is deemed to have exercised his right notwithstanding the purchase is not made. It is not intended hereby to change or modify this holding. However, as stated in the case of *French v. Tatro*, *supra*, cases in which the equities are manifest may arise, and in fact have arisen, where the right is not exhausted by the filing of the application, and in such cases a second one will be allowed.

In the case at bar it appears that the failure to consummate the transaction was due to no fault or negligence on the part of the

applicant but to the fact that the land was not appraised. Applicant was not advised of this fact and it appears that he had no knowledge of his right under paragraph 19 of the regulations to deposit with the receiver the amount specified in his application as the reasonable value of the land and timber thereon, and that he would then be allowed to proceed as though the appraisement had been regularly made. His rights were terminated without notice under paragraph 19 of said regulations.

In view of the foregoing the equities existing in favor of the applicant are manifest, and his rights should not be held to have been exhausted by his first application.

\* \* \* \* \*

The decision of the Commissioner appealed from is reversed.

### WALTER G. BRASIER ET AL.

*Decided January 29, 1916.*

#### SOLDIERS' ADDITIONAL—BASIS OF RIGHT.

The act of June 22, 1874, adopting the Revised Statutes, took effect from the first moment of that day, and an entry based on a soldiers' declaratory statement filed on that date is not a proper basis for a soldiers' additional right under section 2306, R. S., which limits the right of additional entry thereunder to persons who had *theretofore* made entry for less than 160 acres.

#### JONES, *First Assistant Secretary*:

Walter G. Brasier, assignee of George E. Pitts, has appealed to the Department from decision of the Commissioner of the General Land Office of September 2, 1915, rejecting his application, filed May 21, 1915, to enter, under section 2306, Revised Statutes, the NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 12, T. 17 N., R. 22 E., M. M., 40 acres, Lewistown, Montana, land district. Said application is based upon the assignment of 40 acres of the alleged right of Marcus W. Pitts, who, it is alleged, served in Company A, 38th Iowa Infantry, from August 14, 1862, to September 11, 1863, and who, it is further alleged, made soldiers' declaratory statement No. 1277, at Salina, Kansas, June 22, 1874, for the N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 24, T. 13 S., R. 3 W., 6th P. M., 80 acres, based upon said military service, and followed by homestead entry No. 16806, on November 23, 1874, cancelled by relinquishment August 12, 1875.

The only question presented upon this appeal is whether the filing on June 22, 1874, of said soldiers' declaratory statement, followed by homestead entry, is sufficient basis for soldiers' additional right. It being held by the Commissioner that such application must have been filed previous to June 22, 1874, under the terms of the statute, to

become a proper basis for an additional right under section 2306, Revised Statutes, the question presented is whether said act took effect from the beginning of the day upon which it was signed, June 22, 1874, or only from the hour it was approved by the President of the United States, there being no showing as to the hour when such signature was actually attached to the bill, making it an act of the national legislature.

It is claimed upon appeal that three patents have issued upon applications based upon homestead entries made on June 22, 1874. Such action has never received the sanction of the Department and can not be held to in any way affect the question at bar.

It was held in the case of William J. Miller (15 L. D., 142) that the act of March 3, 1891, repealing the timber culture law, which was shown to have been approved by the President after the close of business hours on said last-named date, did not take effect as a law to prevent patent of a timber culture entry made on that day. The timber culture act thus repealed had been long in effect and the repeal thereof took away a right which existed until such repeal took effect and said case has little analogy to the case now under consideration. Moreover, in the case now presented, there is no showing as to the hour when the signature of the President was actually attached and no reason is perceived why the general rule that a statute takes effect from the first hour of the day upon which it becomes a law does not apply. The arguments in support of this conclusion are fully presented in the Commissioner's decision and need not be restated herein. This decision is analogous with that made by the Department in connection with proclamations making withdrawals of land from entry, and is believed to be correct.

The decision appealed from is affirmed.

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### LIAS v. HENDERSON.

*Decided January 31, 1916.*

#### SETTLEMENT—ADVERSE CLAIM—RESIDENCE.

To entitle a claimant to a preference right of entry by reason of prior settlement it is essential that he establish residence on the land claimed within a reasonable time after his first acts of settlement, to the exclusion of a home elsewhere, and such residence must be maintained pending the determination of an adverse claim.

#### SWEENEY, *Assistant Secretary*:

Stanley H. Henderson has appealed from the decision of the Commissioner of the General Land Office of September 18, 1915, cancelling his homestead entry made October 16, 1914, for lots 1, 2, 3 and

4, and E.  $\frac{1}{2}$  W.  $\frac{1}{2}$ , Sec. 31, T. 17 N., R. 26 E., Lewistown, Montana, which was opened to entry October 14, 1914.

With his application to make entry Henderson filed affidavit, alleging settlement on the land December 12, 1912, and continuous residence from that date.

William H. Lias filed homestead application for this land October 16, 1914, and on that date the Henderson application, filed October 14, 1914, was allowed and Lias's application rejected.

On November 12, 1914, Lias filed contest affidavit against the entry, and on December 16, 1914, filed amended contest affidavit, alleging *bona fide* settlement upon the land September 1, 1914, continuous residence from that time, and that Henderson had acquired no *bona fide* settlement right whatever, and that his affidavit as to settlement is false and fraudulent.

A hearing was had on this contest February 12, 1915, and from the testimony taken at that time it appears that Henderson performed his first acts of settlement on the land the latter part of December, 1912, and in the spring of the following year built a cabin thereon. Since then he has broken about 35 acres of land, cultivated a portion thereof, and built a fence around the claim. It further appears, however, that from the time of his alleged settlement on the land in December, 1912, to the date of the hearing in February, 1915, a period of about twenty-five months, entryman spent approximately thirty days on the land, an average of but little more than one day for each month. During all this time it appears that he lived at his father's house, a considerable distance from the land in controversy. It is established that Lias settled on the land the first of September, 1914, built a cabin thereon 14 x 22 feet in size, disked 25 acres of the broken ground, and sowed 18 acres thereof to wheat and that he has continuously maintained residence on the land since that time.

In order that a claimant be entitled to a preference right of entry by reason of prior settlement, it is essential that he establish residence on the land claimed, within a reasonable time from his first acts of settlement, to the exclusion of a home elsewhere, and residence must be maintained pending the determination of an adverse claim. Such residence on the part of Henderson has not been shown, and he is not, therefore, entitled to a preference right of entry by reason of prior settlement.

In view of the foregoing it is held that Lias, by reason of his settlement on the land prior to the filing of the township plat in the local office, his cultivation thereof, and continued residence thereon, is entitled to a preference right of entry.

The decision of the Commissioner is affirmed.

**LIAS v. HENDERSON.**

Motion for rehearing of departmental decision of January 31, 1916, 44 L. D., 542, denied by First Assistant Secretary Jones, April 4, 1916.

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**RECLAMATION—ACT MARCH 4, 1915—CREDIT FOR WATER  
RIGHT PAYMENTS.****INSTRUCTIONS.**

DEPARTMENT OF THE INTERIOR,  
RECLAMATION SERVICE,  
Washington, December 10, 1915.

**THE SECRETARY OF THE INTERIOR.**

SIR: The act of March 4, 1915 (38 Stat., 1215), provides that where it has been determined that the land embraced in an entry or all thereof in excess of 20 acres is not or will not be irrigable under the project, the entryman may in lieu thereof select and make entry for another farm unit under the project and on the new entry shall be given credit for time of *bona fide* residence maintained on the original entry.

The reclamation extension act (38 Stat., 686) provides in section 1 that "any person who hereafter makes entry . . . shall at the time of making . . . entry . . . pay into the reclamation fund five per centum of the construction charge fixed for his land as an initial instalment," etc.

Cases have arisen where the original entry was made prior to the passage of the extension act and the entryman has paid into the reclamation fund one or more payments on account of the construction charge, which payments exceed the amount of the initial payment required under the extension act *supra*.

In view of the language of the extension act requiring payment to be made into the reclamation fund at time of entry the question has arisen whether the homesteader, on relinquishing his original entry and making a new entry in lieu thereof under the said act of March 4, 1915, is entitled to credits for his payments made on account of the construction charge on his original entry. It is to be observed that the act of March 4, 1915, under which the new entry is made is remedial in nature; that the entryman has made payments for the construction charge which it has been determined can do him no good as his original entry is not irrigable under the project. A manifest injustice would be done in such cases if the entryman should not get credit for these payments on his new entry. It may

be further said that "payment" does not in all cases mean payment in cash and it is the view of the Commission that in the cases in question "payment" may be considered as having been made under the extension act by a transfer of credits.

Further, by paragraph 94, page 40, of the reclamation circular approved February 6, 1913, as amended to September 6, 1913 [42 L. D., 349, 386], it is provided that an entryman may relinquish his entry and assign his credits for payments made by him on account of the water right and that the assignee upon making entry under the conditions specified in that paragraph receive credit for these payments on his water right application.

This condition and procedure has become widely known on all projects and has been followed in numerous cases prior to the passage of the reclamation extension act. The question now arises whether the said provision of the extension act requiring at time of entry payment into the reclamation fund of five per centum of the charge fixed for the land operates to prohibit the assignment of credits heretofore allowed under the departmental ruling as set forth in said paragraph 94 of the reclamation circular.

The reclamation act of June 17, 1902 (32 Stat., 388), section 4, requires the charges to be determined with a view to returning to the reclamation fund the estimated cost of construction of the project "and shall be apportioned equitably." Thus is evidenced an intent of Congress that the United States shall not make a profit but simply receive a return of the cost and that this return shall be equitably apportioned.

In both these cases the return has been in part made. To exact a repayment would be exacting a double return as to the lands in question in the one case, and as to the individual in the other.

It is thought, construing the above provision of the extension act with the original reclamation act, that the payment referred to in the former can justly be held to be a payment either in cash or by credits on account of payments previously made, that such a construction would be equitable and just, without doing violence to the language of the extension act.

#### RECOMMENDATIONS.

It is therefore recommended that this office be authorized to accept water right applications in all cases of new entries made under the said act of March 4, 1915, allowing the entryman credit for his payments under the extension act to the amount to which he is justly entitled by reason of payments made on his original water right application.

It is further recommended that in cases of assignments under said paragraph 94 of the reclamation circular, this office be authorized to accept water right applications under the extension act, allowing the assignee credit upon his water right payments under the extension act to the amount of the credits assigned to him, as provided in said paragraph 94.

Respectfully,

WILL R. KING,  
*Acting Director.*

Recommendation approved December 20, 1915:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

### **PATENTS—DEFECTIVE RECORDS—SIGNATURES OF PROPER OFFICERS.**

#### **CIRCULAR.**

[No. 457.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., February 2, 1916.*

The act of May 10, 1800 (2 Stat., 73), which authorized the President of the United States to issue patents for public lands, provided that said patents should be countersigned by the Secretary of State and recorded in books kept in his office. This record consists of a copy of the entire patent, including the signatures of the officials who signed the original.

The act of April 25, 1812 (2 Stat., 716), provided (sec. 8) that land patents should be signed by the President of the United States and countersigned by the Commissioner of the General Land Office.

The acts of July 4, 1836 (5 Stat., 107), and March 3, 1841 (id., 416), authorized the President to appoint a secretary to sign his name to land patents, and designated the recorder of the General Land Office to countersign them and affix the seal.

In recording many of the patents issued in the early years it was the practice, for some reason not now evident, either to omit altogether from such record the names of the officers whose duty it was to sign and countersign the patents, or to insert merely their initials. In some cases the name or initials of but one of the officers appears in the patent record.

March 3, 1843 (5 Stat., 627), Congress passed an act providing that literal exemplifications of patent records which did not contain the full names of the proper officers should be held to be of the same

validity as though the names of said officials had been fully inserted in the record. It was the understanding of this office that the passage of this act cured these defective records, so far as their value as evidence was concerned, until the United States Supreme Court rendered its decision in the case of *McGarrahan v. Mining Company* (96 U. S., 316), at the October term, 1877. The court, in commenting upon the act of March 3, 1843, said:

The record to prove a valid patent must still show that these provisions of the law were complied with. The names need not be fully inserted in the record, but it must appear in some form that the names were actually signed to the patent when it issued. If they are partially inserted in the record it will be presumed that they fully appeared in the patent, but no such presumption will be raised if no signature is shown by the record. Here no signature does appear, and consequently none will be presumed.

The principle thus announced was followed by the court in numerous cases, which it is unnecessary to cite.

Under this decision, therefore, patent records which do not contain at least the initials of the officers whose duty it was to sign and countersign the original patent are not considered legal evidence of the issuance of a patent. If, however, the original patent itself was properly signed and countersigned as required by law, it operated to vest in the patentee title to the land described, notwithstanding the imperfect and incomplete record.

It is now the practice of the office not to furnish certified copies from such records unless specifically requested to do so. Instead, the owner of at least a portion of the land involved can secure the issuance of a perfect patent, in the name of the original patentee, by filing in this office his sworn application therefor, accompanied by evidence of such ownership in the form of a certificate of the recorder of deeds of the county in which the land is located. In his application it must be clearly shown (1) that no patent conveying any portion of the land has ever been recorded in the county in which it is embraced at the date of the application, or in any county in which it has been embraced since the date of the imperfect patent record; (2) that no such patent has ever come into the possession of the applicant, and that he has never been advised of nor had any information concerning the issuance of one; (3) that he has made due and diligent inquiry in all places in which it might be supposed said patent would be found, if it ever existed, and like inquiry of all persons who might be supposed to have knowledge concerning such patent, naming and describing such persons together with their relation to the property, if any, in detail, without obtaining any information concerning it.

Upon receipt of such an application and evidence, if deemed satisfactory and all else be found regular, this office will cause a perfect

patent to be issued. There is no charge for this, and the perfect patent will be delivered as requested by the applicant.

CLAY TALLMAN, *Commissioner*.

Approved:

ANDRIEUS A. JONES,

*First Assistant Secretary.*

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**JACOB WEINBERGER.**

*Decided February 4, 1916.*

**VALENTINE SCRIP—UNSURVEYED LAND—RETURN OF SCRIP.**

A location of Valentine scrip on unsurveyed land becomes fixed and certain upon identification of the selected land by survey, and thereafter the locator can not abandon the location and have the scrip returned to him.

SWEENEY, *Assistant Secretary*:

Jacob Weinberger appealed from decision of June 24, 1915, denying return to him of Valentine scrip E-275, located on the unsurveyed NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 30, T. 1 N., R. 16 E., Denver, Colorado, on the ground that the application for return of the scrip was not made before survey of the land.

March 14, 1910, Weinberger, as assignee, located the above described Valentine scrip. The land has since been surveyed and is by survey filed October 15, 1913, lot 3, Sec. 27, T. 1 N., R. 15 $\frac{1}{2}$  E., G. & S. R. M., Phoenix, Arizona, land district.

The appeal cites instructions of June 17, 1874 (1 C. L. L., 806), which provide that:

After a piece of the said scrip shall have been filed upon an unsurveyed tract, you will *in no event allow the party to amend the description or diagram*, or to reclaim the scrip without express instructions from this office.

The brief then states that:

The tract actually selected and intended to be described in the application to locate said scrip filed in 1910, was what, when surveyed, turned out to be lot 3 of section 27, T. 1 N., R. 15  $\frac{1}{2}$  E.; but it was erroneously described in the application as the NW.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$  of Sec. 30, T. 1 N., R. 16 E.—a tract some three miles away from the one actually intended to be located.

Grant that this is so. A description of unsurveyed land is in every case only the presumption of one who makes the location that, on survey, it will have such a description. The description is necessarily uncertain, resting on the contingency of a future survey. What is selected or located by the scrip is a certain tract on the face of the earth, and one making it has the right to adjust it to the description which, on survey, is found to be appropriate to the tract actually located.

When Weinberger found that the description in his location, by an irregularity of survey, was inappropriate to and did not describe the land as identified by the survey his remedy was to apply to the Commissioner of the General Land Office for amendment of the description. It is conceded that the land located with the scrip can be identified; in fact, claimant assumes to identify it.

The claimant relies upon the decision in *Henry A. Bruns* (15 L. D., 170), wherein Valentine scrip was permitted to be withdrawn after location. In that case, after the location of a piece of Valentine scrip on unsurveyed land, the applicant sought to withdraw before any survey was made and the Department noted that it might be an indefinite time before the Government would survey such land. The inchoate claim obtained by such location was compared to a settlement on public lands which the settler might abandon and, by parity of reasoning, the scrip locator was allowed to abandon and reclaim his scrip. The facts were not appropriate to the present case. The land had been surveyed before any application to recall the scrip. In *Frank Burns* (10 L. D., 365) there was a location of Valentine scrip on unsurveyed tide land, near Seattle, which was rejected because the land was not subject to private appropriation. It was held that the location of Valentine scrip on unsurveyed lands confers only a preference right to perfect the location after survey as against all others except the United States, though the United States had full power and authority to dispose of it as in that case was done by admission of the State of Washington. In that case the Department held:

The instructions issued by the General Land Office to the register and receiver relative to the location of this scrip, directs them to issue a receipt for the scrip, when application is made to locate it upon unsurveyed land, and that when the land is afterwards surveyed and the scrip has been adjusted to the survey, duplicate certificates of location shall be issued for the location. The location is thus consummated, and the land is from that moment segregated and has all the force and effect of an entry. But, until the land has been surveyed and the scrip adjusted to the survey, the right acquired by the application is a mere inchoate right, which is paramount to the rights of all others who have not an equal or superior claim to the land, but is not necessarily a valid claim against the United States.

In this case Weinberger held his preference right to make entry of this tract until after it was surveyed. He thus acquired a right above all others who had not a right prior to the initiation of his own. It is not consonant with public policy to allow one seeking to appropriate public lands to play fast and loose, holding land from appropriation of others so long as it suits his convenience and seeking to recover what he had pledged as its price.

Had Weinberger sought to recall his scrip before survey was made, under the decision first cited, *Henry A. Bruns*, *supra*, he might

have done so, but the survey having been made and the land being identified, the rights between himself and the Government and third parties became fixed. The only right which remained to him was to have the description in his location corrected to describe the tract intended to be taken.

The decision is affirmed.

### JOHN LAWRENCE KAIN.

*Decided February 12, 1916.*

#### NATIONAL FOREST LANDS—ACT OF JUNE 11, 1906.

Land within a national forest restored to entry, upon application, under the act of June 11, 1906, is not subject to entry under that act where subsequently eliminated from the national forest by executive proclamation; but entry thereof can only be made under the general public land laws.

#### *JONES, First Assistant Secretary:*

June 9, 1915, John Lawrence Kain made homestead entry 04376 for a tract of 82.26 acres, described by metes and bounds within Sec. 25, T. 15 S., R. 35 E., M. D. M., Independence, California, land district, the tract in question having been restored July 15, 1911, under the act of June 11, 1906 (34 Stat., 233), upon the application of one Ruperto Carrasco.

It appears that the lands in question were formerly within the limits of the Kern National Forest, but were eliminated from such forest limits by Presidential Proclamation of November 23, 1914, the unappropriated lands having become subject to settlement January 18, 1915, and such as were unappropriated and surveyed became subject to entry, filing, or selection February 15, 1915, under the general public land laws.

November 15, 1915, the Commissioner of the General Land Office held the entry of Kain for cancellation as follows:

Since the lands in question were no longer a part of, or within the limits of, a National forest, at the date of the filing of Kain's application, the allowance thereof was erroneous inasmuch as entry can now be made only under the regular homestead laws after the extension of the regular system of surveys over the lands. It is also stated in connection herewith that all lands in Sec. 25, together with other lands within one-fourth mile of Lone Pine Creek, were withdrawn by Executive Order of August 13, 1914, as a part of power site reserve No. 448. If the tract in question is within such quarter mile limit, the entry could not be allowed for that reason.

You will notify the entryman that he is allowed thirty days from notice hereof in which to appeal to the Secretary of the Interior, and that upon his failure to take such action, his entry, which is hereby held for cancellation, will be finally canceled and the case closed without further notice to him. In the event of the cancellation of his entry, it will be without prejudice to his settlement right and to his right to make valid entry thereof after the lands shall have been regularly surveyed.

From this decision the entryman has appealed to the Department.

The record has been examined and it is found that the Commissioner in his decision made a part hereof by quotation has correctly disposed of the case and given to the entryman all information needed to enable him to protect his settlement right. No action more favorable to appellant is possible under the statutes applicable to the case.

The decision appealed from is affirmed.

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## PARAGRAPH 19 OF TIMBER AND STONE REGULATIONS AMENDED.

### INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,  
*Washington, February 19, 1916.*

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

DEAR MR. COMMISSIONER: By departmental decision of January 29, 1916, in the case of Frank O. Horton [44 L. D., 539], you were directed to consider the advisability of amending paragraph 19 of regulations under the timber and stone law (43 L. D., 37), to provide for notice to the applicant of his rights under said section where appraisement of the property is not made within nine months from date of the application to purchase, and to communicate your recommendation thereon. The Department is in receipt of your letter of the 11th instant suggesting that said paragraph be amended to read as follows:

19. Unless the land department, as hereinbefore provided, or otherwise, as directed by the Secretary of the Interior, shall appraise any land applied for under these regulations within nine months from the date of filing of such application, the applicant may, at any time thereafter not later than thirty days from service of notice of such failure to appraise, deposit the amount, not less than \$2.50 per acre, specified in his application as the reasonable value of the land and the timber thereon, with the receiver, provided no appraisement shall have been filed prior to such deposit, and thereupon will be allowed to proceed with his application to purchase as though the appraisement had been regularly made. Where appraisement is not made within nine months, as herein provided, the register and receiver will promptly so notify the applicant by registered mail and of his rights hereunder. The failure of the applicant to make the required deposit within the time allowed will terminate his rights without further notice.

It is ordered that said paragraph be and the same is hereby so amended.

Very truly, yours,

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

## CHIPPEWA AGRICULTURAL LANDS, MINNESOTA.

## CIRCULAR.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., February 19, 1916.*

## REGISTERS AND RECEIVERS,

*Cass Lake, Crookston, and Duluth, Minnesota.*

GENTLEMEN: I inclose herewith Schedules I and II, containing 56,175.62 acres of Chippewa lands, ceded under the act of January 14, 1889 (25 Stat., 642), which lands are to be opened to settlement and entry, as set forth below.

2. Schedule I contains a list of 52,360.27 acres, consisting of "cut-over" lands; of lands in Mud Lake bottom, in T. 156 N., Rs. 41 and 42 W., drained by the State drainage projects, and recently surveyed; of lands eliminated from Indian allotments, and found to be agricultural in character; and of lands formerly classified as "pine land," and shown by recent examination to contain no timber. The lands described in Schedule I are to be disposed of to actual settlers only under the homestead laws, as provided in section 6 of the act of January 14, 1889 (25 Stat., 642), and under the laws applicable to town sites, as provided in the act of February 9, 1903 (32 Stat., 820).

3. Section 4 of the act of May 23, 1908 (35 Stat., 268), provides that all lands in any of the Winnibigoshish, Cass Lake, Chippewas of the Mississippi, or Leech Lake Indian Reservations, not included in the national forest created by said act, theretofore classified or designated as agricultural lands, are declared to be open to homestead settlement; and any of said land which has been classified as timber land shall be open to homestead settlement as soon and as fast as the timber is removed therefrom, provided that none of said lands shall be disposed of except on payment of one dollar and twenty-five cents per acre. On May 17, 1910 (38 L. D., 594), the following rule was adopted relative to the opening of the lands in said reservations from which the timber has been removed, viz:

5. In order to provide an orderly method by which "cut-over" lands in the Chippewa of the Mississippi, Cass Lake, Leech Lake, and Winnibigoshish Indian Reservations may be opened to settlement under the act of May 23, 1908 (35 Stat., 268), the superintendent of logging, Cass Lake, Minn., will hereafter file in the district land office at Cass Lake, as soon as a section or sections are entirely cut over and the timber is all removed therefrom, a notice giving a description of the subdivisions cut over, and from and after such filing in said office, the hour of which you will note on the notice, as well as on a duplicate to be forwarded to this office by the superintendent of logging, the lands will be subject to settlement, should there be no appropriation thereof. You will examine your records and note on the paper filed in your office any appropriation of the lands. You will at once post a copy of the notice in your office and furnish a copy to the local newspapers as an item of news, but not as an advertisement, and to the postmaster at Cass Lake, with a request that he post same in his office. The lands will not be subject to entry until they are included in a schedule of agricultural lands, as provided in the act of January 14, 1889 (25 Stat., 642). No rights will be gained by settling on lands from which the timber has not been cut and removed and notice has not been given in accordance with the foregoing. The superintendent of logging may withhold from notice as aforesaid tracts covered by logging roads which are necessary to future logging operations, notifying this office thereof. The superintendent of logging will give notice to you as expeditiously as possible after a section has been cut clean and the timber removed.

This regulation is applicable only to lands described in Schedule I and only to lands in said reservations.

4. In accordance with said rule, notice was given the district land office at Cass Lake, Minn., on January 11, 1915, at 10.30 a. m., by the superintendent of logging, that certain "cut-over" lands in the reservation mentioned, were subject to settlement from the hour of said filing. These lands are indicated in Schedule I by the letter A after the section number.

A further list of "cut-over" lands in said reservations was filed in the district land office at 9.30 a. m., September 27, 1915, at which time they became subject to settlement. These lands are indicated by the letter B, following the section number.

5. Lands in the former Pigeon River, Deer Creek, Bois Fort, Red Lake, and White Earth Reservations are not affected by said act of May 23, 1908, or said rule 5, quoted above. The lands in these reservations in the Cass Lake district are indicated by the letter C following the section number. The lands in the Crookston and Duluth districts described in this schedule are all in the reservations mentioned. These lands in Schedule I in the Cass Lake district, indicated by the letter C, and those in the Crookston and Duluth districts will be subject to settlement under the homestead laws at 9 o'clock a. m., on April 12, 1916.

6. Schedule II contains 3,815.35 acres of lands classified as "pine" lands, estimated to contain 588½ M feet of white pine and 663½ M feet of Norway. The timber on these lands has heretofore been offered for sale under the act of June 27, 1902 (32 Stat., 400), and reoffered under section 27 of the act of June 25, 1910 (36 Stat., 862), and no bids received for same. Said section 27 provides in part as follows:

That should there be unsold pine timber on lands classified as "pine lands" after a reoffering under this act, the Secretary of the Interior is hereby authorized, if he deems it advisable, to open the lands on which such timber is located to homestead settlement, in accordance with the provisions of section six of said act of January fourteenth, eighteen hundred and eighty-nine, with the condition that the settler shall, at the time of making his original homestead entry, pay for the timber at a rate per thousand feet to be fixed by the Secretary of the Interior, which shall not be less than the minimum price provided by existing law, such payment to be in addition to the price required by law to be paid for the land, the amount of timber to be determined in accordance with existing Government estimates, or to be reestimated, if deemed advisable by the Secretary of the Interior, in such manner as he may prescribe and by such agents as he may designate under the authority of the said act of June twenty-seventh, nineteen hundred and two.

7. These lands have all been reestimated by the superintendent of logging, appointed under the act of June 27, 1902 (32 Stat., 400).

8. The lands described in Schedule II will be subject to settlement under the homestead laws at 9 o'clock a. m., April 12, 1916, standard time. No right to cut the pine timber on the land can be acquired until after entry therefor at the district land office and payment in full for the timber in accordance with the prices given in the schedule.

9. All persons who go upon any lands in the former Pigeon River, Deer Creek, White Earth, Red Lake, and Bois Fort Reservations, or upon any of the lands described in Schedule II, with a view to settlement thereon prior to the hour the lands are formally opened to settlement will gain no rights thereby and preference will be given the prior legal settler after the hour fixed for the opening, or the prior legal applicant, as the case may be, notwithstanding such unlawful settlement.

10. All the lands in both Schedules I and II will be subject to entry at the appropriate district land office at 9 o'clock a. m., on April 26,

1916. All homestead applications and accompanying affidavits may be executed in the manner prescribed by law, and with the required fee and commissions, as well as the price of the timber, if the land applied for is described in Schedule II, may be filed in the proper district land office in person, by mail, or otherwise, within the period of twenty days prior to the date the lands become subject to entry. All such applications shall, with those presented by persons present at the local land office at the hour the lands become subject to entry, be held and treated as simultaneously filed at 9 o'clock a. m., on the day fixed for the opening. Applications subsequently presented will be received and noted in the order of their filing. You will carefully compare all applications simultaneously received as aforesaid, and dispose of them in the manner prescribed by circular No. 324 of May 22, 1914, so far as applicable, bearing in mind particularly that no rights were gained by settling on lands in the former Red Lake, Pigeon River, Deer Creek, White Earth, and Bois Fort Reservations, and lands described in Schedule II, prior to the date fixed in these regulations for such settlement, except as indicated in the following regulation.

11. Notice is expressly given that the following tracts described in the schedules are included in homestead settlements, applications, and entries, as indicated, which have been suspended pending the opening of the lands, and no adverse rights can be secured to said tracts pending the disposal of the claims of the persons whose names are given, viz: NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 18, T. 148 N., R. 37 W., covered by the homestead entry of Nils Hagen; lots 2, 3, 4, sec. 24, T. 144 N., R. 32 W., covered by the homestead entry and settlement of Fred Goulding; NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , said sec. 24, covered by the homestead application of Lucy F. Taylor; E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 33, T. 145 N., R. 31 W., covered by the homestead application of Ole Haraldson, who alleges settlement from May 10, 1910; SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , sec. 2, T. 148 N., R. 38 W., entered by Halvar Stivenson July 13, 1911; N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , sec. 20, T. 145 N., R. 25 W., covered by the homestead settlement of Leonard McDonald, alleged to have been made September 14, 1908; SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 29, T. 163 N., R. 36 W., covered by the homestead entry of Alexander Pousep, made December 27, 1910; lot 5, sec. 3, lot 5, sec. 10, T. 159 N., R. 25 W., included in the homestead entry of Marion F. Smootz, made June 19, 1907, and NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , sec. 25, T. 149 N., R. 38 W., included in the homestead entry of Gust Nelson, made July 2, 1912. Action will at once be taken on these claims with a view to their disposal prior to the date of opening.

12. Notices have been filed in the district land office at Cass Lake, Minn., that the following described tracts heretofore opened to settlement, as stated in the schedule, are applied for by certain Indians, the allotment applications having been filed in the district land office in accordance with rule 3 of the rules adopted May 17, 1910 (38 L. D., 594), viz: E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 28, T. 142 N., R. 30 W.; SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  and lot 6, sec. 6, T. 141 N., R. 30 W.; N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 1, T. 141 N., R. 31 W.; W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , sec. 12, T. 141 N., R. 29 W.; and S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , sec. 8, T. 142 N., R. 27 W.

Any homestead applicant for said lands must accompany the same with his affidavit, duly corroborated, setting forth fully the facts with reference to his settlement, residence, improvements, and cultivation of the land. All applications for these lands will be

forwarded to this office for instructions by special letter, making due notation thereof on your monthly reports of applications, etc. You will report the date notice of the application for allotment was filed in your office.

13. Homestead applicants for Chippewa lands must possess the necessary qualifications required in the case of ordinary homestead entries.

14. A person who has heretofore made a homestead entry may make a second entry for 160 acres of these lands where the same is authorized by the laws and regulations applicable to the public lands of the United States. (See the acts of September 5, 1914, 38 Stat., 712; June 5, 1900, 31 Stat., 267; and May 22, 1902, 32 Stat., 203.)

Additional homestead entries for so much land as, added to the quantity previously entered, shall not exceed 160 acres are provided for in the acts of March 2, 1889 (25 Stat., 854), and April 28, 1904 (33 Stat., 527).

In the consideration of applications to make second and additional homestead entries for these lands you will be governed by the instructions issued under said acts.

15. Each settler is required, by the act of January 14, 1889, to pay for the lands settled upon the sum of \$1.25 for each acre, such payment to be made in five equal annual installments. The five annual payments must be made at the end of the first, second, third, fourth, and fifth years, respectively, from the date of the homestead entry. In entries for land in Schedule II the timber must also be paid for in full at the time of making entry.

16. The usual fee and commissions must be paid at the time of original entry and when the commutation or final payment and proof are made. You will not collect any payment for lands in excess of 160 acres embraced in an entry when the original entry is allowed, as the payment for such excess area will be included in the whole amount required to be paid in installments. (See instructions of Aug. 17, 1901, 31 L. D., 72, and Sept. 6, 1901, 31 L. D., 106.)

17. Under section 8 of the act of May 20, 1908 (35 Stat., 169), entrymen for lands in the former Red Lake Reservation will be required to pay a drainage charge of 3 cents per acre. In all entries made for the lands you will note on the application and receipt the following: "Subject to act of May 20, 1908." (See 36 L. D., 477.)

18. The right of commutation under section 2301, Revised Statutes, is extended to ceded Chippewa lands by the act of March 3, 1905 (33 Stat., 1005), and in case of commutation you will require the entryman to pay the final homestead commissions in addition to the purchase price of the land, \$1.25 per acre. (See 33 L. D., 551.)

19. The disposal of the following lands is subject to the right of the United States to construct and maintain dams for the purpose of creating reservoirs in aid of navigation, as provided in the act of June 7, 1897 (30 Stat., 67), viz: Lot 8, sec. 4, T. 145 N., R. 26 W.; lot 7, sec. 28, lot 5, sec. 32, T. 142 N., R. 27 W.; lot 4, sec. 14, N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , sec. 16, E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , sec. 21, SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 22, S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , sec. 25, T. 142 N., R. 28 W.; lot 5, SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , sec. 27, N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , sec. 34, T. 143 N., R. 28 W.; lot 8, sec. 31, T. 148 N., R. 28 W.; lot 2, sec. 18, T. 141 N., R. 29 W.; E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 3, T. 141 N., R. 30 W.; W.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  of NW.  $\frac{1}{4}$ , sec. 28, S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 36, T. 142 N., R. 30 W.; lot 4, sec. 7, lot 3, sec. 24, T. 146

N., R. 30 W.; lot 1, sec. 9, T. 142 N., R. 31 W.; lot 9, SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , sec. 4, SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 5, lot 6, NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , sec. 6, NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 8, T. 143 N., R. 31 W.; lot 3, sec. 15, lot 3, sec. 20, SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 27, NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 29, lot 2, sec. 30, T. 144 N., R. 31 W.; lot 2, sec. 3, T. 145 N., R. 31 W.; NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 1, lot 5, S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 3, lots 1, 2, 3, W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , sec. 4, lots 2, 3, W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , sec. 5, lot 2, SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , sec. 6, lot 3, E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , sec. 7, lot 4, sec. 8, lot 2, sec. 14, lots 1, 2, 4, SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 17, lots 5, 6, sec. 18, W.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  lot 3, NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 20, SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 22, lot 7, sec. 30, T. 146 N., R. 31 W.; lots 4, 9, E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 19, lot 7, sec. 20, NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , sec. 24, lots 1, 3, 7, 9, N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 25, lots 2, 3, SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , sec. 30, lots 6, 7, NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , sec. 31, N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 32, E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , sec. 36, T. 147 N., R. 31 W.; NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 1, T. 143 N., R. 32 W.; lots 2, 3, 4, NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , sec. 24, T. 144 N., R. 32 W.; NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 12, SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , sec. 13, lots 10, 12, sec. 24, T. 146 N., R. 32 W.; lots 3, 5, S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , sec. 24, lot 1, sec. 25, T. 147 N., R. 32 W.

20. The following tracts are reported to have been sold by the State authorities under the act of May 20, 1908 (35 Stat., 169), viz: S.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , sec. 14, E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , sec. 15, T. 153 N., R. 30 W.; NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 32, T. 154 N., R. 30 W.; lot 1, NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , sec. 36, T. 159 N., R. 30 W.; SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 14, E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , sec. 21, T. 160 N., R. 30 W.; NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 16, T. 152 N., R. 31 W.; NW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 26, NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 30, T. 153 N., R. 31 W.; lots 3, 4, sec. 19, lot 1, sec. 30, T. 158 N., R. 31 W.; SW.  $\frac{1}{4}$ , sec. 14, T. 160 N., R. 31 W.; N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 2, NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , sec. 10, T. 157 N., R. 32 W.; NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 14, lot 4, SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 24, lot 1, NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , sec. 25, SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , sec. 26, NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 28, NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , sec. 35, T. 158 N., R. 32 W.; SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 16, T. 159 N., R. 32 W.; NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 10, N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 11, T. 161 N., R. 37 W.; lot 4, sec. 16, T. 156 N., R. 41 W. The sale of these lands is not recognized by this office.

Section 1 of the act of May 20, 1908 (above cited), provides in part as follows:

That all lands in the State of Minnesota, when subject to entry, and all entered lands for which no final certificates have issued, are hereby made and declared to be subject to all of the provisions of the laws of said State relating to the drainage of swamp or overflowed lands for agricultural purposes \* \* \*.

The lands opened to settlement and entry by these instructions have never previously been subject to entry and therefore were not subject to sale under the law cited.

21. The following tracts are to be disposed of subject to the easements mentioned, viz: W.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , sec. 14, NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , sec. 15, T. 63 N., R. 5 E., public highway under the act of March 3, 1901 (31 Stat., 1084); N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , sec. 9, T. 65 N., R. 23 W., telephone line of the Forest Service; lot 1, sec. 9, T. 142 N., R. 31 W.; lot 3, sec. 20, NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , sec. 29, T. 144 N., R. 31 W.; SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 1, T. 160 N., R. 32 W., right of way of the St. Paul, Minneapolis & Manitoba Railroad Co., now the Great Northern Railway Co.

22. The NW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , sec. 26, T. 62 N., R. 25 W., was opened to settlement and entry by circular of May 10, 1910, but was withdrawn

June 13, 1910, because of the fact that lumber camps were located thereon. There being no longer need of such reservation, the lands will be subject to settlement and entry on the same date as other lands in said reservation.

23. There are included in the schedule 4,929.64 acres in Mud Lake bottom, located in T. 156 N., Rs. 41 and 42 W. These lands were surveyed for disposal under said act of January 14, 1889, for the benefit of the Chippewa Indians, pursuant to the opinion of the Attorney General of June 19, 1912 (29 Op., 455), and in accordance with the opinion of the Attorney General of February 15, 1915, settlers and entrymen for these lands are warned that there is a possibility of litigation with the patentees of lands surrounding said lake bottom, claiming as riparian owners.

24. Notice is hereby expressly given that there are logging roads across many of the tracts described in the schedule. Said logging roads have been used by the purchasers of Chippewa pine timber for several years, and the present prospect is that some of these said roads will continue to be used by said purchasers for several years longer.

25. Notices for publication, as required by said section 6 of the act of January 14, 1889, have been forwarded to the newspapers in which they are to be published. You will post a copy of said notice in your office.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved February 19, 1916.

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

#### SCHEDULE I—AGRICULTURAL LANDS.

List of ceded Chippewa "cut-over" and agricultural lands. The descriptions preceded by letter A after the section number were opened to settlement at 10.30 a. m., on January 11, 1915; the descriptions preceded by letter B after the section number were opened to settlement at 9 o'clock a. m., September 27, 1915, and the descriptions preceded by letter C will be subject to settlement on April 12, 1916, at 9 o'clock a. m., standard time. All the lands will be subject to entry at 9 o'clock a. m., standard time, on April 26, 1916.

#### IN THE CASS LAKE LAND DISTRICT.

T. 62 N., R. 25 W.:	Acres.
Sec. 1 C, lots 1, 2, 3, 4, 5, 6, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	528.91
Sec. 2 C, lots 1, 2, 3, 4, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ .....	481.44
Sec. 3 C, lot 1, SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ .....	336.14
Sec. 8 C, NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ , lots 1, 2, W. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	630.50
Sec. 16 C, all.....	640.00
Sec. 17 C, all.....	640.00
Sec. 18 C, all.....	640.00
Sec. 20 C, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ .....	320.00
Sec. 21 C, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	200.00
Sec. 22 C, NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ , W. $\frac{1}{2}$ SW. $\frac{1}{4}$ , E. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	480.00
Sec. 27 C, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ SW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	280.00
Sec. 28 C, W. $\frac{1}{2}$ SW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	160.00
Sec. 29 C, S. $\frac{1}{2}$ SW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	200.00
Sec. 32 C, NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , lot 4.....	389.56
Sec. 33 C, lots 1, 2, 3, 4, NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	451.04
Sec. 34 C, NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , lots 1, 2, 3, 4.....	635.60
Sec. 35 C, lots 1, 3, W. $\frac{1}{2}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	248.70

	Acres.
T. 145 N., R. 25 W.:	
Sec. 3 A, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 10 A, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 14 A, lot 2.....	41.44
Sec. 20 A, N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	80.00
T. 146 N., R. 25 W.:	
Sec. 4 A, lot 1.....	44.66
Sec. 6 A, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	80.00
Sec. 15 A, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 26 A, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 35 A, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
T. 159 N., R. 25 W.:	
Sec. 3 C, lot 5.....	4.65
Sec. 10 C, lot 5.....	1.65
T. 145 N., R. 26 W.:	
Sec. 2 A, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 4 B, lot 8.....	14.75
Sec. 14 A, W. $\frac{1}{2}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	20.00
T. 146 N., R. 26 W.:	
Sec. 1 B, lots 7, 8, 9.....	79.47
Sec. 2 A, lots 1, 5, 8.....	119.55
Sec. 11 B, N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	120.00
Sec. 16 B, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	200.00
Sec. 21 B, W. $\frac{1}{2}$ NW. $\frac{1}{4}$ .....	80.00
T. 147 N., R. 26 W.:	
Sec. 1 B, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 2 B, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 11 B, lot 2.....	32.00
Sec. 33 A, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	80.00
Sec. 34 A, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
T. 148 N., R. 26 W.:	
Sec. 1 B, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 9 A, NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	200.00
Sec. 16 A, lot 2.....	16.05
T. 158 N., R. 26 W.:	
Sec. 25 C, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 26 C, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
T. 159 N., R. 26 W.:	
Sec. 9 C, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	80.00
Sec. 13 C, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 16 C, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , E. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	120.00
T. 141 N., R. 27 W.:	
Sec. 5 B, N. $\frac{1}{2}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	20.00
Sec. 6 B, lot 9.....	21.46
Sec. 9 A, lot 7.....	30.45
T. 142 N., R. 27 W.:	
Sec. 5 A, W. $\frac{1}{2}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	20.00
Sec. 8 A, S. $\frac{1}{2}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	20.00
Sec. 28 A, lot 7.....	46.50
Sec. 31 A, lots 5 and 6.....	87.51
Sec. 32 A, lot 5, S. $\frac{1}{2}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	72.00
T. 148 N., R. 27 W.:	
Sec. 5 A, lots 1, 2, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	165.00
Sec. 8 A, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 18 A, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 20 B, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
T. 157 N., R. 27 W.:	
Sec. 10 C, lot 3.....	43.30
T. 158 N., R. 27 W.:	
Sec. 27 C, lot 6.....	38.90
Sec. 28 C, lot 1.....	48.15
Sec. 29 C, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
T. 159 N., R. 27 W.:	
Sec. 15 C, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
T. 141 N., R. 28 W.:	
Sec. 6 B, S. $\frac{1}{2}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	20.00
Sec. 7 B, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 12 B, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	20.00

T. 141 N., R. 28 W.—Continued.	Acres.
Sec. 34 A, lot 12.....	25.74
Sec. 35 A, lot 2.....	54.25
T. 142 N., R. 28 W.:	
Sec. 3 B, N. $\frac{1}{2}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	20.00
Sec. 4 B, lot 7.....	19.12
Sec. 14 A, lot 4.....	50.90
Sec. 16 B, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , W. $\frac{1}{2}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 21 B, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	20.00
Sec. 22 B, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 25 A, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	20.00
Sec. 31 B, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , E. $\frac{1}{2}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	60.00
T. 143 N., R. 28 W.:	
Sec. 27 B, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , lot 5.....	77.25
Sec. 34 B, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	20.00
T. 148 N., R. 28 W.:	
Sec. 1 A, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	80.00
Sec. 2 A, all fractional section except NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	605.44
Sec. 3 A, S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	240.00
Sec. 4 A, all fractional section except lots 1, 2, S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	478.86
Sec. 11 A, NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	480.00
Sec. 12 A, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	80.00
Sec. 14 A, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 15 A, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , E. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	120.00
Sec. 16 B, lot 4.....	16.50
Sec. 26 A, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 31 B, lot 8.....	.61
T. 159 N., R. 28 W.:	
Sec. 7 C, lots 2, 3, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	154.40
T. 160 N., R. 28 W.:	
Sec. 25 C, lot 4, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	59.60
T. 141 N., R. 29 W.:	
Sec. 5 B, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 12 B, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , W. $\frac{1}{2}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , W. $\frac{1}{2}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	80.00
Sec. 18 B, lots 2, 10, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	119.75
Sec. 23 B, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , E. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	160.00
Sec. 26 A, lots 3 and 4.....	73.00
T. 158 N., R. 29 W.:	
Sec. 3 C, lots 2, 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	241.58
Sec. 28 C, W. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	80.00
Sec. 29 C, SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ .....	320.00
Sec. 30 C, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	120.00
Sec. 31 C, lot 4, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	84.36
Sec. 33 C, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 34 C, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	120.00
T. 159 N., R. 29 W.:	
Sec. 12 C, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 34 C, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	240.00
T. 160 N., R. 29 W.:	
Sec. 17 C, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ .....	200.00
Sec. 18 C, lots 3, 4, NE. $\frac{1}{4}$ , E. $\frac{1}{2}$ NW. $\frac{1}{4}$ , E. $\frac{1}{2}$ SW. $\frac{1}{4}$ , E. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	482.70
Sec. 19 C, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 20 C, W. $\frac{1}{2}$ NW. $\frac{1}{4}$ .....	80.00
Sec. 30 C, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	120.00
Sec. 31 C, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	120.00
T. 141 N., R. 30 W.:	
Sec. 3 B, E. $\frac{1}{2}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	20.00
Sec. 6 A, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , lot 6, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	182.06
Sec. 12 B, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , N. $\frac{1}{2}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
T. 142 N., R. 30 W.:	
Sec. 28 B, W. $\frac{1}{2}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , E. $\frac{1}{2}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 36 B, S. $\frac{1}{2}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , S. $\frac{1}{2}$ N. $\frac{1}{2}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	30.00
T. 146 N., R. 30 W.:	
Sec. 24 B, lot 3.....	20.70
T. 147 N., R. 30 W.:	
Sec. 25 B, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00

	Acres.
T. 153 N., R. 30 W.:	
Sec. 4 C, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 19 C, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
T. 141 N., R. 31 W.:	
Sec. 1 A, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	20.00
T. 142 N., R. 31 W.:	
Sec. 9 B, lot 1.....	16.75
T. 143 N., R. 31 W.:	
Sec. 4 A, lot 9, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	92.55
Sec. 5 A, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 6 A, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , lot 6.....	82.26
Sec. 8 A, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
T. 144 N., R. 31 W.:	
Sec. 15 B, lot 3, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	58.30
Sec. 20 B, lot 3.....	27.60
Sec. 27 B, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 29 B, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 30 B, lot 2.....	36.85
T. 145 N., R. 31 W.:	
Sec. 33, E. $\frac{1}{2}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	20.00
T. 146 N., R. 31 W.:	
Sec. 1 B, lots 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ .....	461.65
Sec. 2 A, lots 1, 2, 4, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	442.34
Sec. 3 A, lot 5, S. $\frac{1}{2}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	164.30
Sec. 4 A, lots 1, 2, 3, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	197.95
Sec. 5 A, lots 2, 3, SE. $\frac{1}{4}$ .....	231.65
Sec. 6 A, lots 2, 7, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	135.27
Sec. 7 A, lots 1, 3, E. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	154.60
Sec. 8 A, W. $\frac{1}{2}$ NE. $\frac{1}{4}$ , lot 4, E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , E. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	289.55
Sec. 9 A, NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , lots 1, 2, 3, 4, E. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	479.55
Sec. 12 B, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	80.00
Sec. 14 B, lot 2.....	51.45
Sec. 15 A, NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	280.00
Sec. 16 A, lots 1, 2, 3, 4, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	490.85
Sec. 17 A, lots 1, 2, 4, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	209.85
Sec. 18 A, lots 5 and 6.....	64.92
Sec. 20 A, W. $\frac{1}{2}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , E. $\frac{1}{2}$ of lot 3, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	180.00
Sec. 21 A, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ .....	120.00
Sec. 22 B, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 23 B, lot 2.....	58.00
T. 147 N., R. 31 W.:	
Sec. 19 A, lots 1, 2, 4, 9, E. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	252.19
Sec. 20 A, lots 1, 2, 3, 4, 7, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	313.93
Sec. 24 A, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	160.00
Sec. 25 A, lots 3, 7, 9.....	78.85
Sec. 25 B, lot 1, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	44.65
Sec. 30 A, lots 2, 3, 4, 5, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , E. $\frac{1}{2}$ SW. $\frac{1}{4}$ , W. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	364.25
Sec. 31 A, lots 1, 2, 6, 7, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , E. $\frac{1}{2}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	362.80
Sec. 32 A, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	120.00
Sec. 36 A, entire section.....	640.00
T. 153 N., R. 31 W.:	
Sec. 30 C, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	80.00
Sec. 31 C, lot 1.....	39.37
T. 143 N., R. 32 W.:	
Sec. 1 A, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
T. 144 N., R. 32 W.:	
Sec. 24, lots 2, 3, 4, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	180.18
T. 146 N., R. 32 W.:	
Sec. 1 A, lots 1, 2, 6, 7, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , W. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	316.17
Sec. 12 A, lots 3, 4, 5, W. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	268.27
Sec. 13 A, lots 1, 3, 7, 8, 9, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	178.75
Sec. 24 A, lots 2, 5, 6, 7, 10, 12, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	327.73

T. 147 N., R. 32 W.:	Acres.
Sec. 24 A, lots 3, 5, 6, 7, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	333.81
Sec. 25 A, lots 1, 2, 5, W. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ .....	385.56
Sec. 36 A, lots 1, 4, N. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ .....	352.50
T. 150 N., R. 32 W.:	
Sec. 8 C, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ .....	80.00
T. 150 N., R. 33 W.:	
Sec. 14 C, lots 7, 8, 9.....	2.71
Sec. 15 C, lot 11.....	2.99
Sec. 16, lots 8, 9, 10, 11.....	22.24
Sec. 17, lot 5.....	5.38
T. 148 N., R. 35 W.:	
Sec. 21 C, lots 3, 4.....	18.45
Sec. 29 C, SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	120.00
Sec. 36 C, lot 4.....	.95
T. 149 N., R. 35 W.:	
Sec. 20 C, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 21 C, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ , W. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	160.00
Sec. 26 C, lot 1.....	.30
Sec. 29 C, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
T. 150 N., R. 35 W.:	
Sec. 28 C, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	80.00
Sec. 32 C, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	80.00
Sec. 33 C, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , N. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	200.00
T. 156 N., R. 35 W.:	
Sec. 3 C, W. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	80.00
Sec. 4 C, SE. $\frac{1}{4}$ .....	160.00

## IN THE CROOKSTON LAND DISTRICT.

All lands opened in the Crookston land district will be subject to settlement on April 12, 1916, at 9 o'clock a. m., of standard time.

T. 158 N., R. 30 W.:	
Sec. 2, lots 3, 4, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	118.24
T. 159 N., R. 30 W.:	
Sec. 36, lot 1, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	80.70
T. 160 N., R. 30 W.:	
Sec. 14, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 21, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ .....	80.00
T. 158 N., R. 31 W.:	
Sec. 8, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 9, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	120.00
Sec. 10, NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	560.00
Sec. 15, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ NW. $\frac{1}{4}$ .....	120.00
Sec. 16, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	80.00
Sec. 17, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	160.00
Sec. 19, lots 3 and 4.....	86.10
Sec. 20, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	280.00
Sec. 21, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 29, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ , W. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	160.00
Sec. 30, lot 1.....	43.05
T. 160 N., R. 31 W.:	
Sec. 14, SW. $\frac{1}{4}$ .....	160.00
T. 161 N., R. 31 W.:	
Sec. 31, lot 1.....	39.47
Sec. 33, NE. $\frac{1}{4}$ , E. $\frac{1}{2}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	320.00
T. 157 N., R. 32 W.:	
Sec. 2, N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	120.00
Sec. 10, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
T. 158 N., R. 32 W.:	
Sec. 13, E. $\frac{1}{2}$ NW. $\frac{1}{4}$ .....	80.00
Sec. 14, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 24, lot 4, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	72.04
Sec. 25, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , lot 1.....	72.45
Sec. 26, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 28, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	80.00
Sec. 35, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	80.00

	Acres.
<b>T. 159 N., R. 32 W.:</b>	
Sec. 6, lot 2.....	39.72
Sec. 7, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 8, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 9, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 16, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	160.00
<b>T. 160 N., R. 32 W.:</b>	
Sec. 1, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	320.00
Sec. 2, lot 4, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	361.64
Sec. 3, lot 4, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ .....	362.85
Sec. 4, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	160.00
Sec. 5, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	120.00
Sec. 6, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 8, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , E. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	320.00
Sec. 9, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ .....	520.00
Sec. 10, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	280.00
Sec. 11, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 12, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	160.00
Sec. 14, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 15, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	120.00
Sec. 16, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ .....	80.00
Sec. 17, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	120.00
Sec. 28, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 29, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ .....	160.00
Sec. 30, N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	80.00
<b>T. 159 N., R. 33 W.:</b>	
Sec. 2, lot 3, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	240.45
<b>T. 160 N., R. 33 W.:</b>	
Sec. 16, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 17, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 22, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 25, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	80.00
<b>T. 162 N., R. 33 W.:</b>	
Sec. 14, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
<b>T. 163 N., R. 33 W.:</b>	
Sec. 19, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
<b>T. 157 N., R. 34 W.:</b>	
Sec. 15, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	80.00
<b>T. 158 N., R. 34 W.:</b>	
Sec. 15, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 16, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
<b>T. 159 N., R. 34 W.:</b>	
Sec. 2, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 3, lots 2, 3, 4, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	281.95
Sec. 10, S. $\frac{1}{2}$ SW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	160.00
Sec. 11, W. $\frac{1}{2}$ NE. $\frac{1}{4}$ , E. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ , W. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	400.00
Sec. 14, S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ .....	240.00
Sec. 15, NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ , E. $\frac{1}{2}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	520.00
Sec. 16, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	320.00
<b>T. 160 N., R. 34 W.:</b>	
Sec. 23, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 27, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 31, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 32, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ .....	200.00
Sec. 33, W. $\frac{1}{2}$ SW. $\frac{1}{4}$ , E. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	160.00
Sec. 34, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	440.00
<b>T. 163 N., R. 34 W.:</b>	
Sec. 24, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	80.00
Sec. 25, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	80.00
<b>T. 159 N., R. 35 W.:</b>	
Sec. 1, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 17, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 20, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 31, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	160.00
Sec. 32, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	80.00
Sec. 34, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00

	Acres.
T. 160 N., R. 35 W.:	
Sec. 1, lots 3 and 4.....	70.26
Sec. 2, lot 1, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	234.99
Sec. 16, W. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	80.00
Sec. 17, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	120.00
Sec. 20, SE. $\frac{1}{4}$ .....	160.00
Sec. 28, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 29, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ .....	80.00
Sec. 30, lot 2, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , W. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	187.93
T. 148 N., R. 36 W.:	
Sec. 9, lot 8.....	.45
Sec. 14, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	80.00
Sec. 34, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
T. 149 N., R. 36 W.:	
Sec. 3, N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	80.00
Sec. 16, lot 1, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	79.85
Sec. 28, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
T. 150 N., R. 36 W.:	
Sec. 26, lot 2.....	37.40
T. 156 N., R. 36 W.:	
Sec. 1, lots 2, 3, 4.....	67.06
T. 158 N., R. 36 W.:	
Sec. 4, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 5, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 8, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 9, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
T. 159 N., R. 36 W.:	
Sec. 11, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 19, lots 3 and 4.....	78.28
Sec. 36, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	120.00
T. 163 N., R. 36 W.:	
Sec. 29, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
T. 143 N., R. 37 W.:	
Sec. 36, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	240.00
T. 144 N., R. 37 W.:	
Sec. 13, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 16, NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ .....	560.00
Sec. 27, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	80.00
Sec. 28, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
T. 146 N., R. 37 W.:	
Sec. 28, N. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ .....	40.00
T. 148 N., R. 37 W.:	
Sec. 31, N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ .....	40.00
T. 150 N., R. 37 W.:	
Sec. 36, S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ .....	40.00
T. 161 N., R. 37 W.:	
Sec. 10, N. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ .....	40.00
Sec. 11, N. $\frac{1}{2}$ N. W. $\frac{1}{4}$ , S. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$ .....	120.00
T. 149 N., R. 38 W.:	
Sec. 25, NW. $\frac{1}{4}$ S. W. $\frac{1}{4}$ .....	40.00
T. 160 N., R. 38 W.:	
Sec. 25, W. $\frac{1}{2}$ N. E. $\frac{1}{4}$ , S. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$ .....	120.00
T. 156 N., R. 41 W.:	
Sec. 7, lots 5, 6, 7, 8, 9, 10, E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ , S. E. $\frac{1}{4}$ .....	385.49
Sec. 8, lots 5, 6, 7, 8, 9.....	153.51
Sec. 16, lots 4 and 5.....	40.77
Sec. 17, lots 3, 4, 5, 6, 7, 8, W. $\frac{1}{2}$ N. E. $\frac{1}{4}$ , E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ , E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ , S. E. $\frac{1}{4}$ .....	599.86
Sec. 18, lots 1, 2, 3, 4, N. E. $\frac{1}{4}$ , E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ , E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ , S. E. $\frac{1}{4}$ .....	609.83
Sec. 19, lots 2, 3, 4, 5, 6, 7, N. E. $\frac{1}{4}$ , E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ , E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ , N. $\frac{1}{2}$ S. E. $\frac{1}{4}$ .....	583.53
Sec. 20, lots 6, 7, 8, 9, W. $\frac{1}{2}$ N. E. $\frac{1}{4}$ , N. W. $\frac{1}{4}$ .....	383.22
Sec. 21, lot 2.....	11.13
Sec. 30, lots 7, 8, 9.....	48.35
T. 156 N., R. 42 W.:	
Sec. 12, lots 5, 6, 7.....	130.53
Sec. 13, lots 2, 3, 4, 5, S. $\frac{1}{2}$ N. E. $\frac{1}{4}$ , S. $\frac{1}{2}$ N. W. $\frac{1}{4}$ , S. E. $\frac{1}{4}$ , S. W. $\frac{1}{4}$ .....	643.37
Sec. 14, lots 5, 6, 7, 8.....	138.34
Sec. 23, lots 5, 6, 7, 8.....	205.44

## T. 156 N., R. 42 W.—Continued.

	Acres.
Sec. 24, all.....	640.00
Sec. 25, lots 5, 6, 7, N. E. $\frac{1}{4}$ , N. $\frac{1}{2}$ N. W. $\frac{1}{4}$ .....	323.27
Sec. 26, lot 3.....	32.90

## IN THE DULUTH LAND DISTRICT.

All lands opened in the Duluth land district will be subject to settlement on Apr. 12, 1916, at 9 o'clock a. m. of standard time.

## T. 63 N., R. 5 E.:

Sec. 1, lots 3, 4, S. $\frac{1}{2}$ N. W. $\frac{1}{4}$ .....	160.00
Sec. 2, lots 1, 3, S. $\frac{1}{2}$ N. E. $\frac{1}{4}$ , S. $\frac{1}{2}$ N. W. $\frac{1}{4}$ .....	240.00
Sec. 3, lot 1.....	40.00
Sec. 4, lot 3.....	40.00
Sec. 8, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 11, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , E. $\frac{1}{2}$ SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	240.00
Sec. 12, NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	320.00
Sec. 14, W. $\frac{1}{2}$ NE. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ .....	320.00
Sec. 15, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	160.00
Sec. 16, W. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	120.00
Sec. 21, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	120.00

## T. 64 N., R. 5 E.:

Sec. 33, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00
Sec. 34, W. $\frac{1}{2}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	280.00
Sec. 35, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00
Sec. 36, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SW. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	200.00

## T. 63 N., R. 6 E.:

Sec. 7, lots 1 and 2.....	75.10
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## T. 65 N., R. 21 W.:

Sec. 28, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00
Sec. 29, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	80.00

## T. 64 N., R. 23 W.:

Sec. 21, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , W. $\frac{1}{2}$ SW. $\frac{1}{4}$ .....	120.00
Sec. 28, lot 4.....	55.10

## T. 65 N., R. 23 W.:

Sec. 5, lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	319.43
Sec. 7, lots 2, 3, 4, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ , E. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	206.68
Sec. 8, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ .....	480.00
Sec. 9, SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	240.00
Sec. 10, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 15, N. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	240.00
Sec. 16, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , S. $\frac{1}{2}$ NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	440.00
Sec. 17, NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ .....	600.00
Sec. 18, lots 1, 2, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	154.32
Sec. 19, lots 3, 4, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	80.65
Sec. 20, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 21, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	160.00
Sec. 22, NE. $\frac{1}{4}$ , E. $\frac{1}{2}$ NW. $\frac{1}{4}$ , E. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	320.00
Sec. 23, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ , W. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	280.00
Sec. 26, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00
Sec. 36, N. $\frac{1}{2}$ NW. $\frac{1}{4}$ , N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....	160.00

## SCHEDULE II—PINE LANDS.

The following is a list of lands classified as pine lands, all of which will be subject to settlement under the homestead laws, on April 12, 1916, at 9 o'clock a. m., standard time. The lands will be subject to entry at 9 o'clock a. m., standard time, on April 26, 1916, at which time the timber must be paid for in full in accordance with the prices given opposite each description. Any person cutting the timber off the land before payment therefor will be regarded as a trespasser and dealt with accordingly.

## IN THE CASS LAKE LAND DISTRICT.

	Acres.	White pine.	Norway.	Price of timber.
T. 64 N., R. 24 W.:		<i>M feet.</i>	<i>M feet.</i>	
Sec. 1, lot 14.....	5.15	22	.....	\$110.00
T. 158 N., R. 26 W.:				
Sec. 25, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	10	.....	50.00
Sec. 26, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	2 $\frac{1}{2}$	.....	12.50
T. 157 N., R. 27 W.:				
Sec. 10, lot 4.....	41.85	7	.....	35.00
T. 159 N., R. 28 W.:				
Sec. 26, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	1 $\frac{1}{2}$	.....	7.50
Sec. 26, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	1	.....	5.00
Sec. 26, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	7 $\frac{1}{2}$	.....	37.50
Sec. 26, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	6	.....	30.00
T. 146 N., R. 30 W.:				
Sec. 7, lot 4.....	1.80	1	.....	5.00
T. 153 N., R. 30 W.:				
Sec. 14, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	.....	1 $\frac{1}{2}$	6.00
Sec. 14, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	$\frac{1}{2}$	1	6.50
Sec. 15, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	2	1	14.00
Sec. 15, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	1	2	13.00
Sec. 20, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	1	$\frac{1}{2}$	7.00
T. 154 N., R. 30 W.:				
Sec. 20, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	7	.....	35.00
Sec. 32, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00	1	.....	5.00
Sec. 32, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	.....	$\frac{3}{4}$	3.20
Sec. 34, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	1 $\frac{1}{2}$	$\frac{1}{2}$	9.50
T. 145 N., R. 31 W.:				
Sec. 3, lot 2.....	35.26	.....	10	40.00
T. 146 N., R. 31 W.:				
Sec. 30, lot 7.....	39.75	$\frac{1}{2}$	2 $\frac{1}{2}$	12.50
T. 152 N., R. 31 W.:				
Sec. 16, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	5	.....	25.00
Sec. 16, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	4	.....	20.00
T. 153 N., R. 31 W.:				
Sec. 26, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00	3	.....	15.00
Sec. 32, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00	$\frac{1}{2}$	$\frac{1}{2}$	4.50
Sec. 35, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	5 $\frac{1}{2}$	6 $\frac{1}{2}$	53.50
T. 153 N., R. 32 W.:				
Sec. 26, lot 5.....	47.93	.....	25	150.00
T. 148 N., R. 33 W.:				
Sec. 16, lot 10.....	13.10	.....	3	12.00
Sec. 16, lot 11.....	16.85	2	2	18.00
T. 148 N., R. 35 W.:				
Sec. 33, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	.....	10	40.00
T. 150 N., R. 35 W.:				
Sec. 31, lot 4.....	33.34	1	$\frac{1}{3}$	6.33

## IN THE CROOKSTON LAND DISTRICT.

		<i>M feet.</i>	<i>M feet.</i>	
T. 168 N., R. 33 W.:				
Sec. 17, lot 1.....	18.10	5	.....	\$25.00
Sec. 18, lot 2.....	28.79	20	.....	100.00
Sec. 20, lot 1.....	9.50	10	.....	50.00
Sec. 20, lot 2.....	7.86	1	.....	5.00
Sec. 28, lot 4.....	34.70	2	.....	10.00
Sec. 29, lot 3.....	41.25	20	.....	100.00
T. 157 N., R. 34 W.:				
Sec. 10, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	40	.....	200.00
T. 153 N., R. 34 W.:				
Sec. 3, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	.....	1	4.00
Sec. 3, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	.....	2 $\frac{1}{2}$	10.00
Sec. 3, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	.....	15	60.00
Sec. 3, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	.....	3	12.00

## IN THE CROOKSTON LAND DISTRICT—continued.

	Acres.	White pine.	Norway.	Price of timber.
T. 158 N., R. 34 W.—Continued.				
Sec. 9, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	7	M. feet.	\$35.00
Sec. 9, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	2 $\frac{1}{2}$		12.50
Sec. 9, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	55		275.00
Sec. 10, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	8		40.00
Sec. 15, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00	14		70.00
Sec. 16, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00	16		80.00
Sec. 16, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	7		35.00
Sec. 21, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00	10		50.00
T. 160 N., R. 34 W.:				
Sec. 5, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00		$\frac{1}{2}$	2.00
Sec. 5, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00		2	8.00
Sec. 5, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00		1 $\frac{1}{2}$	6.00
T. 167 N., R. 34 W.:				
Sec. 7, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	3		15.00
Sec. 7, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	4		20.00
T. 159 N., R. 35 W.:				
Sec. 2, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00		10	40.00
Sec. 3, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00		1 $\frac{1}{2}$	6.00
Sec. 3, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00		1 $\frac{1}{2}$	6.00
Sec. 3, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00		10	40.00
Sec. 3, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00		6	24.00
Sec. 4, lot 1.....	40.82		6	24.00
Sec. 4, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00		20	80.00
Sec. 4, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00		40	160.00
Sec. 4, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00		20	80.00
Sec. 4, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00		30	120.00
Sec. 4, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00		5	20.00
Sec. 5, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00		10	40.00
Sec. 5, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00		80	320.00
Sec. 13, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00		5	20.00
Sec. 17, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00		20	80.00
Sec. 18, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00		3	12.00
Sec. 19, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00		1	4.00
Sec. 19, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00		4	16.00
Sec. 24, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00		13	52.00
Sec. 24, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00		10	40.00
Sec. 24, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00		13	52.00
Sec. 34, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00	20		100.00
Sec. 34, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00	20		100.00
T. 161 N., R. 35 W.:				
Sec. 24, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00		$\frac{1}{3}$	1.33
Sec. 24, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00		$\frac{2}{3}$	1.33
T. 159 N., R. 36 W.:				
Sec. 36, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	15		75.00
Sec. 36, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	35		175.00
T. 143 N., R. 37 W.:				
Sec. 3, lot 3.....	37.11	19	13	160.00
Sec. 5, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	5		25.00
Sec. 32, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00	10	1	55.00
Sec. 32, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	15	85	600.00
Sec. 35, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	10	40	300.00
T. 148 N., R. 37 W.:				
Sec. 18, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	$\frac{1}{2}$		1.66
T. 159 N., R. 37 W.:				
Sec. 20, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00		$\frac{1}{2}$	2.00
T. 160 N., R. 37 W.:				
Sec. 26, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00		3	12.00
Sec. 35, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00		3	12.00
Sec. 35, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00		2	8.00
T. 148 N., R. 38 W.:				
Sec. 2, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	12		60.00

## IN THE DULUTH LAND DISTRICT.

	Acres.	White pine.	Norway.	Price of timber.
T. 65 N., R. 21 W.:		<i>M. feet.</i>	<i>M. feet.</i>	
Sec. 4, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00	1	15	\$65.00
Sec. 9, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00	2	.....	10.00
Sec. 16, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00	8	15	100.00
Sec. 16 NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....	40.00	.....	7	28.00
Sec. 17, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....	40.00	40	50	720.00
Sec. 20, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00	5	25	180.00
Sec. 27, lot 3.....	8.54	17	.....	136.00
Sec. 27, lot 4.....	8.10	10	.....	280.00
Sec. 27, lot 5.....	7.66	25	.....	00.00
Sec. 29, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....	40.00	$\frac{1}{3}$	.....	1.00
T. 66 N., R. 21 W.:				
Sec. 27, lot 6.....	17.89	.....	$\frac{7}{10}$	2.80
T. 64 N., R. 23 W.:				
Sec. 21, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ .....	40.00	1	.....	5.00

## RECAPITULATION.

Schedule I:	Acres.
Cass Lake district.....	26,744.47
Crookston district.....	19,084.52
Duluth district.....	6,531.28
Total.....	52,360.27

Schedule II.	White pine.	Norway.	Price of timber.	Acres.
	<i>M. feet.</i>	<i>M. feet.</i>		
Cass Lake district.....	94	67 $\frac{1}{2}$	\$788.53	1,075.03
Crookston district.....	385 $\frac{3}{4}$	482 $\frac{3}{4}$	4,148.82	2,378.13
Duluth district.....	109	113 $\frac{3}{4}$	2,155.80	362.19
Total, II.....	588 $\frac{3}{4}$	663 $\frac{3}{4}$	7,093.15	3,815.35
Total acreage.....				56,175.62

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
February 19, 1916.

I respectfully recommend that the foregoing schedules of ceded Chippewa lands, embracing lands classified as agricultural under the act of January 14, 1889 (25 Stat., 642), "cut-over" lands subject to homestead entry under the act of May 23, 1908 (35 Stat., 268), lands in former Mud Lake bottom, and certain lands classified as pine lands, and to be opened to homestead entry under section 27 of the act of June 25, 1910 (36 Stat., 862), be approved.

Approved:

ANDRIEUS A. JONES,  
First Assistant Secretary.

CLAY TALLMAN,  
Commissioner.

**SCHMIDT v. McCURDY.***Decided February 19, 1916.***PRACTICE—RULE 8—PROOF OF SERVICE OF NOTICE OF CONTEST.**

Upon failure to file proof of service of notice of a contest within thirty days from the date of such service, as required by Rule 8 of Practice, the contest abates *ipso facto*, in case no answer is filed, without the necessity of any action by the adverse party or the local officers.

**JONES, First Assistant Secretary:**

Henry Emil Schmidt has appealed from the decision of the Commissioner of the General Land Office of September 25, 1915, holding that his contest, filed March 22, 1915, upon which notice issued June 7, 1915, against the desert land entry of Fred Earl McCurdy, made August 22, 1913, for the NE.  $\frac{1}{4}$ , Sec. 6, T. 28 S., R 24 E., Visalia, California, land district, abated for failure to file proof of service of notice thereof upon entryman within 30 days from the date of such service, no answer having been filed.

Personal service of notice of the above contest was made on entryman June 29, 1915, but proof thereof was not filed until July 30, 1915—more than 30 days from the date of such service. Rule 8 of the Rules of Practice provides:

Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if service by publication is ordered, unless publication is commenced within 20 days after such order and proof of publication is made not later than 20 days after the fourth publication, as specified in Rule 10, the contest shall abate: *Provided*, That if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.

The purpose of this rule is to expedite the orderly administration of the public land laws relating to the initiation of contests, and to prevent delay in the prosecution thereof to the detriment of a junior contestant. Under this rule, upon failure to make proof of service of notice of contest within the time specified, where no answer has been filed, the contest abates *ipso facto*, without the necessity of any action on the part of the adverse party, or the local officers.

There is no error in the Commissioner's decision and the same is affirmed.

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**A. J. FOWLER.***February 24, 1916.***AUTHORITY OF SECRETARY TO LEASE OIL AND GAS LANDS.**

In the absence of specific legislation providing therefor, the Secretary of the Interior is without authority to enter into or make leases covering public oil and gas lands.

*First Assistant Secretary Jones to A. J. Fowler, Esq., Denver, Colo.*

The Department is in receipt of your letter of February 9, 1916, directing attention to the applications for leases of oil lands pre-

sented by Paul Lovell, of Marietta, Ohio, by James H. Causey, Denver, Colorado, and by James B. Shepard, also of Denver, Colorado.

From the files and records of this Department it appears that Paul Lovell, in the fall of 1912, executed and presented a formal application for an oil and gas lease on a royalty basis covering the following described lands situated in Natrona County, Wyoming, namely:

All of Sec. 14; SE.  $\frac{1}{4}$ , Sec. 15; NE.  $\frac{1}{4}$ , Sec. 22; SE.  $\frac{1}{4}$ , Sec. 34; NE.  $\frac{1}{4}$  and S.  $\frac{1}{2}$ , Sec. 35, T. 40 N., R. 79 W., 6th P. M.

The form of lease sought was essentially similar to that used in connection with the leasing of the oil and gas lands belonging to certain Indians in the State of Oklahoma.

About the same time there was also presented on behalf of James H. Causey a like application for other tracts in the above-mentioned township. In your letter it is stated that James B. Shepard also applied for a similar lease of other land in said township, but the records of this Department fail to disclose the presence of such an application.

It would appear that these lands were all withdrawn by departmental order of September 27, 1909, and were included in temporary petroleum withdrawal No. 5, made in aid of proposed legislation affecting the use and disposal of petroleum deposits on the public domain. Furthermore, the lands in question were, by Presidential order of July 2, 1910, pursuant to the act of June 25, 1910 (36 Stat., 847), included in petroleum reserve No. 8, and were reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands.

In support of the application on behalf of Mr. Paul Lovell, your firm, that of Doud & Fowler, of Denver, Colorado, submitted a brief in which it was contended that power and authority to lease withdrawn oil lands existed in the Interior Department as a power supplemental and subordinate to that of withdrawal. It was urged that in order to protect and conserve the oil deposits from depletion by trespassers and by the operations of line wells upon private lands, the application for lease should be granted.

The question of leasing oil and gas lands and other nonmetalliferous mineral deposits upon the public domain has received considerable study and consideration in this Department.

It has been concluded that as the law now stands there is no authority vested in the Secretary of the Interior to enter into or make leases covering public oil and gas lands and that legislation is necessary.

In H. R. bill 16136, 63d Congress, 2d Session, were embodied provisions specifically authorizing the Secretary of the Interior to grant prospecting permits and leases upon oil and gas bearing lands. Like

provisions are contained in H. R. bill 406, 64th Congress, 1st Session, which was passed by the House of Representatives on January 15, 1916, and which is now pending before the Senate. Until the power to make oil leases is specifically granted by Congress, this Department is not justified in receiving or accepting applications for leases of such character. It follows that the application of Mr. Paul Lovell, and the applications of the other gentlemen mentioned, can not receive recognition, and that such applications must be and the same are hereby denied and dismissed.

### FREDERICKA FRITZ.

*Instructions, February 26, 1916.*

#### SECOND HOMESTEAD—INDIAN LANDS—CREDIT FOR PRIOR INSTALLMENTS.

One who made homestead entry of Shoshone or Wind River Indian lands under the act of March 3, 1905, and abandoned the same after making part payment of the Indian price therefor, is not entitled, upon making second entry under that act, to credit for the installments paid on the first entry.

#### CONFLICTING DEPARTMENTAL DECISION OVERRULED.

Zelmer R. Moses, 36 L. D., 473, overruled.

#### JONES, *First Assistant Secretary:*

The Department has considered the case of Fredericka Fritz, forwarded with your [Commissioner of the General Land Office] letter of June 8, 1915, requesting instructions with respect to the right of said Fritz to repayment of an alleged excess payment of \$40, in connection with second homestead entry 0231, made July 31, 1908, under the act of March 3, 1905 (33 Stat., 1021), for the SW.  $\frac{1}{4}$ , Sec. 4, T. 2 N., R. 2 E., Lander, Wyoming, land district.

It appears that prior to making the above described entry, Fritz, on May 11, 1907, made original homestead entry, Lander 02641, under the act of March 3, 1905, *supra*, for the NE.  $\frac{1}{4}$ , Sec. 10, T. 2 N., R. 2 E., W. R. M., the lawful price of which was \$1.50 per acre.

In accordance with the terms of the statute, under which the original entry was allowed, claimant paid \$120, consisting of the first installment of \$80, at the rate of 25 cents per acre, and the second installment of \$40, at the rate of 25 cents per acre. Thereafter, Fritz abandoned the land, and upon her failure to make further required payments the entry was canceled, June 23, 1914, after due notice.

When Fritz made her second entry, July 31, 1908 (Lander 0231), under the act above cited, she paid \$80, the first installment; on August 6, 1909, she paid a second installment of \$40; and on June 19, 1913, a third installment of \$40, making a total cash payment of \$160, as part payment on \$240, the lawful price of the land, leaving a balance due thereon of \$80. The register issued final certificate on this second entry July 28, 1914, and the receiver applied the \$120 purchase

money paid on her first canceled entry (Lander 02641), which, in addition to the \$160 already paid, it is now claimed, gave Fritz credit for \$280 payment upon her second entry, which was patented December 23, 1914, and in connection with which she now seeks reimbursement to the extent of \$40, as excess.

In the first place it is sufficient to state that Fritz by paying \$160, a portion of the lawful price of the land embraced in her second entry, paid no more than lawfully required. As a matter of fact there actually remained due on that particular entry additional payments amounting to \$80, in accordance with the terms of the act under which the entry was made (act of March 3, 1905, 33 Stat., 1021). It follows necessarily that the present applicant is not entitled to repayment of \$40 as excess on an entry in connection with which payments have not been made in full. You will, therefore, deny the present application for repayment for \$40 excess alleged to have been paid in connection with the second entry (Lander 0231) under authority hereof.

It is observed that the Department in the case of Zelmer R. Moses (36 L. D., 473), which was practically similar in all essential respects to the present one, held as follows:

In making second homestead entry under the provisions of the act of February 8, 1908, credit can not be allowed for the fees and commissions paid upon the original abandoned entry.

Credit for installments paid upon the Indian price for the land embraced in the original abandoned entry may be allowed in the second entry where it embraces land of the same class for which like payments are required.

The act of March 3, 1905, *supra*, under which both entries were made, clearly provides in section 2 thereof, that—

In case any entryman fails to make the payments herein provided for, or any of them, within the time stated, all rights of the said entryman to the lands covered by his or her entry shall cease, and any payments theretofore made shall be forfeited, and the entry shall be held for cancellation, and canceled.

It is manifest that the local officers gave Fritz credit on her second entry under authority of the Zelmer R. Moses case above cited. The Department, therefore, in view of the fact that said decision was in force and effect at the date final certificate was issued on Fritz's second entry, and especially since said entry has in the meantime been patented, deems it proper not to require any additional payment in connection therewith. If any moneys were improperly applied on the second entry it was merely to the extent of \$80.

It is evident from the very wording of section 2 of the act of March 3, 1905, *supra*, and following the principle laid down in the case of Dorathy Ditmar (43 L. D., 104), if Fritz had applied for repayment of the purchase price paid on her first entry canceled upon voluntary abandonment and failure to make payments when due, re-

payment would have necessarily been denied. It is, therefore, now observed that by allowing credit for such money on a second entry there is accomplished indirectly exactly what the statute expressly forbids, that is reimbursement to the extent of such moneys as are paid on an entry under said act of March 3, 1905, which has been canceled for the reasons above stated.

It is manifest that in cases similar to this, the proper procedure is to require payment in full upon the second entry in accordance with the terms of the act under which it was made. The question as to the right to repayment of moneys paid on a former entry is a proper one to be determined under the appropriate repayment laws upon the filing of an application for repayment, instead of allowing claimant credit for that amount upon a second entry under said act.

Section 2 of the act of March 3, 1905, *supra*, in so far as the disposition of the purchase price paid by claimant upon her first entry, canceled for abandonment and failure to meet requirements, is concerned, appears to be specific and mandatory. It is not ambiguous or subject to any such interpretation as would warrant the Department in allowing credit for the purchase price paid on the first entry, so canceled, to be applied upon a second entry made by the same party, even though the lands embraced in the second entry are of the same character and value.

Under the circumstances the Department is now convinced that the practice authorized by the decision in the case of Zelmer R. Moses (36 L. D., 473), is without authority of law and the principle therein laid down goes far beyond the scope of the act of March 3, 1905, *supra*. Said decision is accordingly hereby overruled and the practice heretofore permitted thereunder will be no longer followed.

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## PROCEEDINGS IN CONTESTS ON REPORT BY REPRESENTATIVES OF THE GENERAL LAND OFFICE.

### CIRCULAR.

[No. 460.]

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

*Washington, D. C., February 26, 1916.*

TO SPECIAL AGENTS AND REGISTERS AND RECEIVERS,

*United States Land Offices:*

The following rules are prescribed for proceedings in contests initiated upon a report by a representative of the General Land Office. All existing instructions in conflict herewith are superseded:

1. The purpose hereof is to secure speedy action upon claims to the public lands, and to allow claimant, entryman, or other claimant

of record, opportunity to file a denial of the charges against the entry or claim, and to be heard thereon if he so desires.

2. Upon receipt of a report this office will consider the same and determine therefrom whether the facts stated, if true, would warrant the rejection or cancellation of the entry or claim.

3. Should the charges, if not disputed, justify the rejection or cancellation of the entry or claim the local officers will be duly notified thereof and directed to issue notice of such charges in the manner and form hereinafter provided for, which notice must be served upon the entryman and other parties in interest shown to be entitled to notice.

4. The notice must be written or printed and must refer to the letter from this office by initial and date, as authority for issuing the notice, and must state fully the charges as contained in said letter; also the number of the entry or claim, subdivision of land involved, name of entryman or claimant or other known parties in interest.

5. The notice must also state that the charges will be accepted as true (*a*) unless the entryman or claimant files in the local office within 30 days from receipt of notice a written denial under oath, of said charges, with an application for a hearing, (*b*) or submits a statement of facts rendering the charges immaterial, (*c*) or if he fails to appear at any hearing that may be ordered in the case.

6. Notice of the charges may in all cases be served personally upon the proper party by any officer or person or by registered letter mailed to the last address of the party to be notified, as shown by the record, and to the post office nearest to the land. When it is necessary to serve notice on the unknown heirs of a person in interest, the same must be addressed to that person at his address of record and also at the post office nearest the land. Proof of personal service shall be the written acknowledgment of the person served or the affidavit of the person who served the notice, attached thereto, stating the time, place, and manner of service. Proof of service of notice by registered letter shall consist of the report of the register and receiver who mailed the notices, accompanied by the post-office registry return receipts, or the returned unclaimed registered letters.

7. If a hearing is asked for, the local officers will consider same and confer with the Chief of Field Division relative thereto and fix a date for the hearing; due notice of which must be given entryman or claimant. The above notice may be served by registered mail. By ordinary mail, a like notice will be sent to the Chief of Field Division.

8. The Chief of Field Division will duly submit, upon the form provided therefor, to this office, an estimate of the probable expense required on behalf of the Government. He will also cause to be

served subpoenas upon the Government witnesses and take such other steps as are necessary to prepare the case for prosecution.

9. The Government must appear with its witnesses on the date and at the place fixed for said hearing, unless there is reason to believe that no appearance on behalf of the Government will be required. The officer in charge of hearings must, therefore, keep advised, as far as possible, as to whether the defendant intends to appear at the hearing. The Chief of Field Division may, when present, conduct the hearing on behalf of the Government.

10. If the entryman or claimant fails to deny the charges under oath and apply for a hearing, or to submit a statement of facts rendering the charges immaterial, or fails to appear at the hearing ordered without showing good cause therefor, such failure will be taken as an admission of the truth of the charges and will obviate the necessity for the Government submitting evidence in support thereof, and the register and receiver will forthwith forward the case with recommendation thereon to the General Land Office and notify the parties by registered mail of the action taken. In cases finally closed upon default of claimant, if application to reopen any case is filed with the register and receiver, they will forthwith forward same with recommendations to the General Land Office.

11. Upon the day set for the hearing and the day to which it may be continued the testimony of the witnesses for either party may be submitted, and both parties, if present, may examine and cross-examine the witnesses, under the rules, the Government to assume the burden of proving the charges, unless otherwise ordered.

12. If a hearing is had, as provided in paragraph 11, the local officers will render their decision upon the record, giving due notice thereof in the usual manner. When decision is adverse to the Government, notice thereof must be sent to the Chief of Field Division.

13. Appeals or briefs, if filed, must be in accordance with the rules but need not be served upon the Chief of Field Division or Government representative in charge of the hearing.

14. The above proceedings will be governed by the rules of practice. All notices served on claimants or entrymen must likewise be served upon transferees or mortgagees.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

**FORT BERTHOLD COAL LANDS—TIME FOR PAYMENTS EXTENDED.**

## CIRCULAR.

[No. 462.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., February 29, 1916.*

REGISTER AND RECEIVER,

*Minot, North Dakota.*

SIRS: Your attention is directed to section 1 of the act of Congress approved August 3, 1914 (38 Stat., 681), which reads as follows:

That the lands in the Fort Berthold Indian Reservation, North Dakota, which on account of their containing coal were reserved from allotment and other disposition under the act of June first, nineteen hundred and ten, entitled "An act to authorize the survey and allotment of lands embraced within the limits of the Fort Berthold Indian Reservation, in the State of North Dakota, and the sale and disposition of a portion of the surplus lands after allotment, and making appropriation and provision to carry the same into effect," shall be subject to disposal under the provisions of said act: *Provided*, That patents issued for such lands shall contain a reservation to the United States of any coal that such lands may contain, to be held in trust for the Indians belonging to and having tribal rights on the Fort Berthold Indian Reservation, but any entryman shall have the right at any time before making final proof of his entry, or at the time of making such final proof, to a hearing for the purpose of disproving the classification as coal land of the land embraced in his entry, and if such land is shown not to be coal land a patent without reservation shall issue.

Your attention is also directed to section 1 of the act of Congress approved May 28, 1914 (38 Stat., 383), which provides:

That the Secretary of the Interior is hereby authorized to extend for a period of one year the time for the payment of any annual installment due, or hereafter to become due, on the purchase price for lands sold under the act of Congress approved June first, nineteen hundred and ten, entitled "An act to authorize the survey and allotment of lands embraced within the limits of the Fort Berthold Reservation, in the State of North Dakota, and the sale and disposition of a portion of the surplus lands after allotment, and making appropriation and provision to carry the same into effect," \* \* \* and any payment so extended may annually thereafter be extended for a period of one year in the same manner: *Provided*, That the last payment and all other payments must be made within a period not exceeding one year after the last payment becomes due, by the terms of the act under which the entry was made: *Provided further*, That any and all payments must be made when due, unless the entryman applies for an extension and pays interest for one year in advance at 5 per centum per annum upon the amount due as herein provided, and patent shall be withheld until full and final payment of the purchase price is made in accordance with the provisions hereof: *And provided further*, That failure to make any payment that may be due, unless the same be extended, or to make any extended payment at or before the time to which such payment has been extended, as herein provided, shall forfeit the entry and the same shall be canceled, and any and all payments theretofore made shall be forfeited.

The provisions of the act of June 1, 1910, were specifically extended to lands to be opened under the act of August 3, 1914, above, and the adoption of such provisions carried with it amendments made thereto by the act of May 28, 1914. In the administration of the act of August 3, 1914, the matter of payments will be governed by the act of May 28, 1914. Instructions of June 17, 1914 (43 L. D., 280), under the act of May 28, 1914, are hereby made applicable to entries allowed under the act of August 3, 1914.

Very respectfully,

CLAY TALLMAN,  
*Commissioner.*

Approved:

ANDRIEUS A. JONES,  
*First Assistant Secretary.*

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ROBERT G. CUSICK.

*Decided February 29, 1916.*

ENLARGED HOMESTEAD—ADDITIONAL—ADJOINING FARM.

An adjoining farm entry under section 2289, R. S., is a proper basis for an additional entry under the enlarged homestead act where the lands in both the adjoining farm entry and the additional entry have been designated under the enlarged homestead act.

JONES, *First Assistant Secretary*:

Robert G. Cusick has appealed from the decision of July 2, 1915, rejecting his application to make an additional homestead entry for the W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$  and SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 13, and NW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 24, T. 5 S., R. 39 E., La Grande, Oregon; for the reason that the entry to which this was to be added was itself an adjoining farm entry.

All the lands involved herein having been designated as subject to entry under the enlarged homestead law, the Commissioner, by letter of December 26, 1914, ordered allowance of this application; but on reconsideration of the question, he concluded that such an order was erroneous.

The facts in the case, as disclosed by the records, are that Cusick was the owner in fee of the NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 23, T. 5 S., R. 39 E., and that on June 19, 1913, he made adjoining farm homestead entry under section 2289, Revised Statutes, for the E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 14, and the NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 23, same township and range.

September 22, 1914, he filed application to make additional homestead entry under the act of February 19, 1909 (35 Stat., 639), for the W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$  and SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 13, and the NW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 24, T. 5 S., R. 39 E. July 2, 1915, the Commissioner of the General

Land Office ruled him to show cause why his said additional entry, which had been designated as No. 013762, should not be canceled on the ground that an adjoining farm homestead entry can not be made the basis of an additional entry under the act of February 19, 1909, *supra*.

Section 2289, Revised Statutes, provides:

That every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

Under the provisions of the so-called enlarged homestead law of February 19, 1909, as amended, any homestead entryman of lands of the character subject to designation and entry under the act and which have been so designated has the right to enter public lands subject to the provisions of the act and contiguous to his former entry which do not, together with the original entry, exceed 320 acres.

In this case, in the opinion of the Department, the adjoining farm homestead entry was an entry under the homestead laws within that term as used in the enlarged homestead act. The land having been designated as subject to entry, as well as the additional lands subsequently applied for, the Department concludes that adjoining farm entry 012150 affords a proper and legal basis for the additional homestead application No. 013762, and that the original order of the Commissioner directing its allowance was correct. In this view of the case, the subsequent decision of the Commissioner, dated July 2, 1915, must be held to be erroneous and is hereby reversed. In the absence of other objection, additional homestead entry 013762 will be allowed to remain intact, subject to future compliance with law.

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### ROBERT H. CUNNINGHAM ET AL.

*Decided February 29, 1916.*

#### INTERMARRIAGE OF HOMESTEADERS—ACT OF APRIL 6, 1914.

The period of one year specified in the act of April 6, 1914, providing that the marriage of a homestead entryman and a homestead entrywoman, after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage, shall not impair the right of either to a patent, begins to run from the date of the entry, where residence was established within six months and the requirements of the homestead law thereafter complied with, and not from the date of the establishment of residence.

*JONES, First Assistant Secretary:*

Appeal has been filed by Robert H. Cunningham and wife from decision of November 30, 1915, by the Commissioner of the General Land Office denying the right of election to hold two homestead

entries by performance of residence upon the entry of Mrs. Cunningham made prior to marriage.

It appears that Robert H. Cunningham made homestead entry for the N.  $\frac{1}{2}$ , Sec. 22, T. 1 N., R. 17 E., M. M., on December 16, 1913, and that on October 3, 1914, Charity M. Stephen (now Mrs. Robert H. Cunningham) made homestead entry for lot 4, SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 2, T. 1 N., R. 17 E., M. M., Bozeman, Montana, land district.

October 22, 1915, said parties filed affidavit stating that they were married on October 21, 1915; that Robert H. Cunningham established residence on his entry February 4, 1914, and that he has resided continuously thereon with the exception of about three months in the fall of 1914, and was at the claim many times during said three months; that he had placed improvements on said homestead entry by building a log house thereon 14 by 16 feet, log barn 14 by 16 feet, frame granary 14 by 16 feet, and two and one-quarter miles of fencing; that he broke 20 acres of the land in 1914, and 30 acres in 1915, which was seeded to fall wheat after harvesting 25 acres of oats; that Mrs. Cunningham prior to her marriage established residence on her entry April 1, 1915, and had continued residence thereon; also that she had broken 10 acres of the land; had built a log house on the claim 16 by 21 feet; a granary 10 by 12 feet; had drilled a well and had one mile of fencing on the land.

In the decision appealed from the Commissioner held as follows:

Inasmuch as the act of April 6, 1914 (38 Stat., 312), requires that each of the parties must have complied with the homestead law for at least one year prior to their marriage, the said election is rejected.

The said act of April 6, 1914, *supra*, reads as follows:

That the marriage of a homestead entryman to a homestead entrywoman after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage shall not impair the right of either to a patent, but the husband shall elect, under rules and regulations prescribed by the Secretary of the Interior, on which of the two entries the home shall thereafter be made, and residence thereon by the husband and wife shall constitute a compliance with the residence requirements upon each entry: *Provided*, That the provisions hereof shall apply to existing entries.

Section 2297, United States Revised Statutes, as amended by the act of June 6, 1912 (37 Stat., 123), clearly allows a period of six months from date of homestead entry within which to establish residence. In this case residence was established by each of the parties involved within the time required and was maintained to the date of marriage. More than one year elapsed from the date of the entries to the time of marriage, and so far as shown neither of the parties was in default but had complied with the requirements of law up to that time.

It is difficult to see upon what theory the right of election was denied unless it was that the entrywoman had not performed actual residence for a period of one year prior to marriage. But the law does not prescribe such condition. It merely requires that "each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage."

Accordingly the decision appealed from is reversed.

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**HERRIN v. STANLEY.**

*Decided February 29, 1916.*

**CONTEST—AFFIDAVIT—ISOLATED TRACT.**

The statement in an application to contest that contestant if successful intends to acquire title by purchase of the land as an isolated tract, and showing his qualifications to make such purchase, meets the requirement of paragraph (e) of Rule 2 of Practice that an applicant to contest must state under what law he intends to acquire title, provided it be shown that the land is of a character subject to that form of appropriation.

*JONES, First Assistant Secretary:*

July 1, 1915, Thomas H. Herrin filed application to contest desert-land entry 03481, made December 20, 1909, by Archie Stanley, for lots 1, 2, 3, and 4, Sec. 12, T. 14 N., R. 4 W., Helena, Montana, land district.

The affidavit of contest alleged that entryman abandoned the land on or about November, 1911, and has never since that time resided upon or cultivated same. It is further alleged that the land is rough and mountainous in character, and contestant states that if cancellation of the entry be secured, it is his intention to acquire title to the land under the provisions of the isolated tract law.

The register and receiver rejected the application to contest, on the ground that it fails to state facts sufficient to constitute a cause of action.

On appeal, the Commissioner of the General Land Office rejected the application on the ground that the method of acquisition proposed by contestant does not carry any assurance that he will be able to acquire title under the isolated tract law, that he would be the highest bidder at public auction, if one were had, and further that it would be impossible for him to exercise preference right within the thirty days allowed by statute. Paragraph B [should be (e)] of Rule 2 of Practice is cited as authority for the Commissioner's decision.

The Department can not concur in the conclusions reached below. The allegation that the desert-land entryman has failed to reside upon the land does not state any cause of action, because residence is not required by the desert-land laws. The allegations that entryman has abandoned the land and has not cultivated the same, or

any part thereof, and that it is rough and mountainous, do, in the opinion of the Department, constitute a sufficient averment to the effect that the entryman has not complied with the requirements of the desert-land law, and that the land is not desert in character.

The Rule of Practice cited by the Commissioner was designed to discourage or prevent speculative contests, and the requirement that applicants to contest state under oath the law and method by which they hope to secure title to the land involved and set out their qualifications was one of the means adopted to secure that end.

While it is true that contestant would probably not be able to secure the ordering into market of an isolated tract and its sale within the period of preference right accorded by the act of May 14, 1880 (21 Stat., 140), yet, nevertheless, his contest, if successful, would result in clearing from the records the desert-land entry and subjecting the land to appropriate disposition under the public-land laws. If vacant public land, and isolated, as alleged, contestant could apply to have same ordered into market and sold, and if the highest bidder at the sale and qualified as set out in his affidavit of contest, could secure the land thereby.

In the view of the Department the contest states a sufficient cause of action, and on the face of his application to contest the applicant has stated the method by which he hopes ultimately to acquire title to the land, and that he is qualified to acquire land under that law. In my opinion, that constitutes a sufficient compliance with the statute and is not inharmonious with the spirit and intent of the Rule of Practice in question.

The Commissioner's decision is accordingly reversed and the case remanded, with directions that a hearing be ordered.

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E. C. KINNEY.

*Decided February 29, 1916.*

RECLAMATION WITHDRAWAL—MINING CLAIM.

A mining claim as to which the claimant was in default in the performance of annual assessment work at the date of a withdrawal for the construction of irrigation works under the reclamation act does not except the land from the force and effect of the withdrawal.

JONES, *First Assistant Secretary*:

Mrs. E. C. Kinney filed claim for \$6,500 for alleged damages resulting from the flooding of certain placer claims by the Reclamation Service under the Minidoka Reclamation Project, Idaho. The mining claims are known as Diamond Bar Nos. 2, 3, 4, 5, and 6. The Reclamation Service rejected the claim for damages and that action was affirmed by departmental decision of July 18, 1911, with-

out prejudice, however, to the right of the claimant to present further evidence regarding the performance of assessment work for the years 1904 and 1905.

Later the matter was investigated by a special agent and a hearing was held whereat testimony was taken. Upon consideration of the new record the Reclamation Service has again recommended rejection of the claim for damages.

The claims were located December 13, 1897, claim No. 4 being located in the name of Mrs. Katie Kinney by her agent, S. H. Abbott. The other claims were located in the names of others and were transferred later to Mrs. Kinney. H. S. Guard, who held claim No. 6, conveyed his interest August 22, 1898, to Mrs. Kinney for \$150. Claim No. 2, was located by S. H. Abbott and claim No. 5, was located by his wife. April 23, 1898, Abbott and wife conveyed by a quit-claim deed their interest in all of the claims for the consideration of \$338, which included also 1 acre of ground situated near claim No. 2, upon which 1 acre tract was a two room house. The house was later sold by Mrs. Kinney and removed prior to the time the land was flooded.

It appears that on November 17, 1902, an area including the mining claims under consideration was withdrawn under the first form by the Secretary under the reclamation act for construction purposes. Funds were authorized on April 23, 1904, for the construction of the dam and spillway and contract was let September 17, 1904, and work commenced on the project soon thereafter. The dam was completed in September, 1906, and the lands embraced in the mining claims were flooded in October of that year.

There appears to have been some sort of partnership agreement with S. H. Abbott for working said mining claims. He located one of the claims in his own name and acted as agent for the location of the others. One of the claims was located in the name of E. C. Kinney, husband of the present claimant. That claim was transferred to Mrs. Kinney December 11, 1899, the consideration therefor expressed was \$1. Abbott was manager and installed machinery for development of the claims but the system was never put into practical operation. After Abbott sold his interest to Mrs. Kinney the claims were practically abandoned so far as actual mining operations were concerned but the husband of claimant claims to have kept up the required amount of assessment work.

There is no doubt that lands containing mineral deposits may be withdrawn and reserved from disposal or exploration. It has been so held as to military and Indian Reservations, but it is also held in that connection that valid mineral locations made prior to such withdrawal are not defeated by such reservation so long as the mineral claimant continues to comply with the law. Fort Maginnis (1 L. D.,

552); *Grisar v. McDowell* (6 Wall., 363); *Lindley on Mines* (Vol. 1, page 384 *et seq.*).

In the case of Navajo Indian Reservation (30 L. D., 515), the Department held that a valid mining location subsisting at the time of reservation of the land was excepted from the effect of the reservation and that such claim was subject to relocation upon failure of the original claimant to perform the required annual assessment work. The opinion therein rendered to the effect that the withdrawal did not attach upon the default of the mineral claimant, was predicated upon the particular language employed in making the reservation. It was plainly indicated that the reservation might have been worded in such way that the withdrawal would have attached upon default of an existing claim so as to prevent relocation. Other reservations were referred to which were made in such form as to save existing claims so long as the requirements of law were complied with but which caused the withdrawal to attach and reserve the lands and prevent their disposal in case of default of the claimant who held the land at the time of the reservation.

The effect of withdrawal under the reclamation act for irrigation works was considered in 32 L. D., 387, and it was there stated that an unperfected mining claim is merely a possessory right which is liable to be divested for failure to perform the necessary yearly labor. Also, that the land department has jurisdiction to determine whether the claimant has defaulted and to declare by its judgment whether such right has been divested so as to restore the land to the control of the Government. This is undoubtedly the true rule, for where a claimant is in default so that his claim could be defeated by another individual adverse claimant, surely the Government, desiring to devote the land to an important public use, may likewise take advantage of the default and divest the claim so as to free the land for Government use. Of course, where the Government takes a claim subsisting and valid the value thereof should be paid. This may be reached by condemnation proceedings or by mutual agreement.

Even under the most liberal consideration of the evidence in the case, the claimant expended in labor only about \$100 for the years 1904 and 1905, which amount was not sufficient to protect more than one claim.

The value of the claims is open to considerable doubt. At one time about thirty men worked upon this and adjacent lands by the hand-rocker method, and made low daily wages in that process. They appear to have worked out such of the lands as proved suitable for that method and discontinued work there. The present claimant planned to operate the claims by sluicing. Machinery was installed for that purpose and a flume was built and a sluice way or ditch partly constructed. But bowlders were encountered which it was

stated prevented the completion of the ditch. No mining was done under the proposed plan although the machinery was installed in 1897. It would appear that the plan was practically abandoned, and in 1906 the machinery was sold and removed before the land was flooded by the Government. The house above referred to was also sold and removed. The flume had decayed and was out of repair. The ditch had an abandoned appearance, being covered by grass and partly obliterated.

The testimony shows that the claimant was offered \$2,500 in 1902 for these five claims, the proposed purchaser having in mind the working of the claims by dredging operations. The claimant at that time asked \$3,000 for the claims and the transfer was not consummated.

Upon consideration of the record, the Department has reached the conclusion that the claimant failed to comply with the requirements of the general mining laws as to the Diamond Bar Nos. 2, 3, 5, and 6, particularly with reference to the performance of the assessment work, and that under the circumstances pertaining to those claims she is not entitled to receive any award. As to claim No. 4, it does appear that the annual assessment work was performed as required by law up to the time when the land was flooded, and that there were certain improvements made upon or for the benefit of said claim, though at the time of the taking over of the land by the United States a portion of the improvements had been disposed of and removed and the balance had greatly deteriorated in value. With respect to that claim, however, the Department believes that a fair adjustment of the claim would be the payment of not exceeding \$1,000. It is therefore directed that the claim for damages be rejected as to all of the mining claims involved except No. 4, and that as to the latter claim, should the claimant consent to accept \$1,000 as reimbursement for all damages, accompanying said consent by a relinquishment of all claims to the land or for damages for the entire area herein involved, the matter be compromised and settled.

The decision of the Reclamation Service and departmental decision of July 18, 1911, are modified accordingly.

### **WILLIAM MCGINLEY.**

*Decided February 29, 1916.*

#### **COAL LAND—APPRAISED PRICE—REPAYMENT.**

Where the purchaser of coal lands paid the appraised value thereof as required by departmental regulations, he is not entitled to repayment of any excess paid by him over and above the minimum price fixed by section 2347, Revised Statutes.

*JONES, First Assistant Secretary:*

William McGinley has appealed from the decision of the Commissioner of the General Land Office of December 15, 1913, rejecting

his application for repayment of alleged excess of purchase money in connection with his coal land entry made March 18, 1909, for the N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 5, T. 9 S., R. 10 W., Montrose, Colorado, land district.

The present application is filed under section 2 of the act of March 26, 1908 (35 Stat., 48), which provides:

That in all cases where it shall appear to the satisfaction of the Secretary of the Interior that any person has heretofore or shall hereafter make any payment to the United States under the public land laws in excess of the amount he was lawfully required to pay under such laws, such excess shall be repaid to such person or to his legal representatives.

Section 2347, Revised Statutes, under which the sale of said land was made, authorizes the sale of public coal lands at—

not less than \$10 per acre for such lands where the same shall be situated more than 15 miles from any completed railroad, and (at) not less than \$20 per acre for such lands as shall be within 15 miles of such road.

By regulations of the Department of April 12, 1907 (35 L. D., 665), issued under sections 2347 to 2352, inclusive, Revised Statutes, abrogating all former regulations, it is directed that said lands shall be disposed of at the price "fixed upon information derived from field examination," but in no case less than the minimum price named in the statute.

Under these regulations applicant was required to pay the appraised value of \$50 per acre for said land, which was within 15 miles of a completed railroad, and he now demands repayment of the alleged excess of \$30 per acre under the act of 1908.

It is contended that the prices fixed by Congress were the maximum as well as the minimum, and that, therefore, the regulations of the Department directing the appraisal and sale of said lands for a greater amount than specified by Congress are illegal.

The question presented is not a new one, these instructions having been upheld in the case of William G. Plested *et al.* (40 L. D., 610) and in numerous similar cases unreported. See also regulations prescribed and cases decided involving the construction of kindred statutes providing for the sale of isolated tracts (37 Stat., 77; departmental regulations of December 18, 1912, 41 L. D., 443), reserved lands within the primary limits of railroad grants (Section 2357, Revised Statutes; Clark *v.* Northern Pacific Ry. Co., 3 L. D., 158; Atlantic & Pacific Ry. Co., 5 L. D., 269; William D. Baker, 12 L. D., 127; Daniel Campbell, 22 L. D., 673; Romona Lopez, 29 L. D., 639; instructions of March 2, 1910, 38 L. D., 468, and Walter Hollensteiner, 38 L. D., 319), timber and stone lands (20 Stat., 89; regulations of November 30, 1908, 37 L. D., 289; Virinda Vinson, 39 L. D., 449).

The Department is unwilling to overturn its many decisions in this connection and long established construction of such statutes. In-

deed, such construction by the Department is in itself controlling in this case, even if sufficient authority was lacking—

on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle, but the basis of a wise and quieting rule that in determining the meaning of a statute or existence of a power, weight should be given to the usage itself, even when the validity of the practice is the subject of investigation. *United States v. Midwest Oil Company*, 236 U. S. 459, 472. See also *St. Paul Railway Co. v. Donohue*, 210 U. S., 21, 36.

The doctrine of *stare decisis*, well known and recognized in this Department, likewise forbids such action (*Rancho Corte de Madera del Presidio*, 1 L. D., 232, 239; *Rees v. Central Pacific R. R. Co.*, 5 L. D., 277; *Taylor v. Yates*, 8 L. D., 279, 281; *State of Ohio*, 10 L. D., 394, 396; *Smith Hatfield*, 17 L. D., 79; *Knight v. Hoppin*, 18 L. D., 324, 325; *Bender v. Shimer*, 19 L. D., 363, 365).

Congress has been specifically informed of the departmental regulations providing for the appraisement and sale of coal lands for a price commensurate with their value, but in no case for less than the prices fixed by statute (*Annual Report of the Secretary of the Interior*, 1907, page 12, and Congress has since provided for withdrawal of public lands for purposes of classification (36 Stat., 847) and made appropriations to be expended in the classification and appraisement of such lands for the purpose of disposing of them at the values so fixed.

The Supreme Court of the United States in the case of *United States v. Midwest Oil Company*, *supra*, page 481, in speaking of a long-continued practice of this Department, in connection with certain withdrawals, said: "Its (Congress's) silence was acquiescence. Its acquiescence was equivalent to consent to continue the practice until the power was revoked by some subsequent action by Congress." This being true, Congress has not only acquiesced in, but, by the appropriations mentioned, has affirmatively approved the practice of the Department in this connection.

The decision of the Commissioner is affirmed.

### LIZZIE LAWSON.

*Decided February 29, 1916.*

#### TIMBER AND STONE ACT—PRICE OF LAND—REPAYMENT.

Where the purchaser of lands under the timber and stone act of June 3, 1878, paid the appraised value thereof, as required by departmental regulations, he is not entitled to repayment of any excess paid by him over and above the minimum price fixed by that act.

*JONES, First Assistant Secretary:*

Lizzie Lawson has appealed from the decision of the Commissioner of the General Land Office of July 24, 1913, denying her application,

filed June 17, 1913, for repayment of an alleged excess of purchase money in connection with timber and stone entry made April 12, 1910, for the SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 6, T. 35 N., R. 3 W., Seattle, Washington, land district.

In the sworn statement accompanying the application to purchase, applicant estimated the value of the land and timber thereon at \$5.00 per acre, and on September 9, 1910, she was advised by the local officers that said land had been appraised at \$5.50 per acre, which was paid by her.

The present application is filed under section 2 of the act of March 26, 1908 (35 Stat., 48), which provides:

That in all cases where it shall appear to the satisfaction of the Secretary of the Interior that any person has heretofore or shall hereafter make any payment to the United States under the public land laws in excess of the amount he was lawfully required to pay under such laws, such excess shall be repaid to such person or to his legal representatives.

The act of June 3, 1878 (20 Stat., 89), relating to the sale of public lands valued chiefly for timber and stone, provides for the sale of such lands "in quantities not exceeding 160 acres to any one person or association of persons at the minimum price of \$2.50 per acre."

Section 3 of said act provides that, "effect shall be given to the foregoing provisions of this act by regulations to be prescribed by the Commissioner of the General Land Office."

By such regulations, as amended, modified and reissued November 30, 1908 (37 L. D., 289), it is provided that:

Any land subject to sale under the foregoing acts may, under the direction of the Commissioner of the General Land Office, upon application or otherwise, be appraised by smallest legal subdivisions, at their reasonable value, but at not less than \$2.50 per acre; and hereafter no sales shall be made under said acts except as provided in these regulations.

\* \* \* \* \*

All unreserved, unappropriated, nonmineral, surveyed public lands within the public-land States, which are valuable chiefly for the timber or stone thereon and unfit for cultivation at the date of sale, may be sold under this act at their appraised value, but in no case at less than \$2.50 per acre.

Applicant contends that the price of \$2.50 per acre, fixed by said act of Congress, is the maximum as well the minimum price, and that, therefore, the regulations of the Department providing for the appraisal and sale of timber and stone lands for a greater amount than specified by Congress are illegal.

The question presented is not a new one, these instructions having been upheld in the case of Virinda Vinson (39 L. D., 449), and this has been the holding of the Department in numerous similar cases unreported. See also regulations prescribed and cases decided in-

volving the construction of kindred statutes providing for the sale of coal lands. (Section 2347, R. S.; departmental regulations of April 12, 1907, 35 L. D., 665; William G. Plested *et al.*, 40 L. D., 610), isolated tracts (37 Stat., 77; departmental regulations of December 18, 1912, 41 L. D., 443); reserved lands within the primary limits of railroad grants (Section 2357, R. S.; Clark *v.* Northern Pacific Ry. Co., 3 L. D., 158; William D. Baker, 12 L. D., 127; Daniel Campbell, 22 L. D., 673; Romona Lopez, 29 L. D., 639; instructions of March 2, 1910, 38 L. D., 468, and Walter Hollensteiner, 38 L. D., 319).

The Department is unwilling to overturn its many decisions in this connection, and long-established construction of such statutes. Indeed such construction by the Department is, in itself, controlling in this case, even if sufficient authority was lacking—

on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle, but the basis of a wise and quieting rule that in determining the meaning of a statute or existence of a power, weight should be given to the usage itself, even when the validity of the practice is the subject of investigation. *United States v. Midwest Oil Company*, 236 U. S., 459, 472. See also *St. Paul Railway Co. v. Donohue*, 210 U. S., 21, 36.

The doctrine of *stare decisis*, well known and recognized in this Department, likewise forbids such action (*Rancho Corte de Madera del Presidio*, 1 L. D., 232, 239; *Rees v. Central Pacific R. R. Co.*, 5 L. D., 277; *Taylor v. Yates*, 8 L. D., 279, 281; *State of Ohio*, 10 L. D., 394, 396; *Smith Hatfield*, 17 L. D., 79; *Knight v. Hoppin*, 18 L. D., 324, 325; *Bender v. Shimer*, 19 L. D., 363, 365).

Congress has been specifically informed of the departmental regulations requiring appraisement of timber and stone lands and sale thereof at their appraised value, but in no case for less than \$2.50 per acre (Annual Report of Secretary of Interior for 1908, page 14), and has thereafter made large additional appropriations to carry on the new work thus imposed on the field service of the General Land Office.

The Supreme Court of the United States, in the case of *United States v. Midwest Oil Company*, *supra*, page 481, in speaking of a long-continued practice of this Department, in connection with certain withdrawals, said: "Its (Congress's) silence was acquiescence. Its acquiescence was equivalent to consent to continue the practice until the power was revoked by some subsequent action by Congress." This being true, Congress has not only acquiesced, but, by the appropriations mentioned, has affirmatively approved the practice of the Department in this connection.

The decision of the Commissioner is affirmed.

**WILLIAM E. DENNIS.***Decided February 29, 1916.***ISOLATED TRACT—REPAYMENT.**

Where the purchaser of an isolated tract at public sale under the act of June 27, 1906, paid the appraised value thereof, as required by departmental regulations, he is not entitled to repayment of any excess over and above the minimum price of \$1.25 per acre fixed by that act.

*JONES, First Assistant Secretary:*

William E. Dennis has appealed from the decision of the Commissioner of the General Land Office of December 15, 1913, denying his application filed June 17, 1913, for repayment of an alleged excess of purchase money in connection with entry of isolated tract described as NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 15, T. 15 N., R. 26 W., Harrison, Arkansas, land district.

The present application is filed under section 2 of the act of March 26, 1908 (35 Stat., 48), which provides:

That in all cases where it shall appear to the satisfaction of the Secretary of the Interior that any person has heretofore or shall hereafter make any payment to the United States under the public land laws in excess of the amount he was lawfully required to pay under such laws, such excess shall be repaid to such person or to his legal representatives.

The act of June 27, 1906 (34 Stat., 517), under which said tract of land was sold, provides:

It shall be lawful for the Commissioner of the General Land Office to order into market and sell at public auction at the land office of the district in which the land is situated, for not less than \$1.25 per acre, any isolated or disconnected tract or parcel of the public domain, not exceeding one quarter section, which, in his judgment, it would be proper to expose for sale after at least thirty days' notice by the land officers of the district in which such land may be situated.

Claimant paid the appraised value of \$2.00 per acre for said land and now contends that the regulations of the Department of December 18, 1912 (41 L. D., 443), in so far as they authorize the sale of isolated tracts for more than \$1.25 per acre, are without authority of law, and that the alleged excess paid by him should be returned under the act of 1908.

The Department has upheld similar regulations issued under kindred statutes in numerous cases involving the sale of coal lands (Section 2347, Revised Statutes; departmental regulations of April 12, 1907, 35 L. D., 665; William G. Plested *et al.*, 40 L. D., 610), reserved lands within the primary limits of railroad grants (Section 2357, Revised Statutes; Clark *v.* Northern Pacific Ry. Co., 3 L. D., 158; Atlantic & Pacific Railway Co., 5 L. D., 269; William D. Baker, 12 L. D., 127; Daniel Campbell, 22 L. D., 673; Romona

Lopez, 29 L. D., 639; instructions of March 2, 1910, 38 L. D., 468, and Walter Hollensteiner, 38 L. D., 319).

The Department is unwilling to overturn its many decisions in this connection and long-established construction of such statutes.

Under the doctrine of *stare decisis*, well-known and recognized in this Department, such action is forbidden (Rancho Corte de Madera del Presidio, 1 L. D., 232, 239; *Rees v. Central Pacific R. R. Co.*, 5 L. D., 277; *Taylor v. Yates*, 8 L. D., 279, 281; *State of Ohio*, 10 L. D., 394, 396; *Smith Hatfield*, 17 L. D., 79; *Knight v. Hoppin*, 18 L. D., 324, 325; *Bender v. Shimer*, 19 L. D., 363, 365).

Not only has this Department recognized that it is largely controlled by its former decisions, but the Supreme Court of the United States has invariably declined to disregard and overthrow the construction placed upon statutes by the executive departments charged with their execution, "except for cogent reasons and unless it is clear that such construction is erroneous" (*United States v. Johnston*, 124 U. S., 236, 253) or "unless a different one is plainly required" (*Hawley v. Diller*, 178 U. S., 476, 488).

The Supreme Court of the United States, in speaking of a long-continued practice of this Department in connection with certain withdrawals, said: "Its (Congress's) silence was acquiescence. Its acquiescence was equivalent to consent to continue the practice until the power was revoked by some subsequent action by Congress" (*United States v. Midwest Oil Company*, 236 U. S., 459, 481).

The decision of the Commissioner is affirmed.

# TABLE OF UNREPORTED CASES DECIDED DURING THE PERIOD COVERED BY THIS VOLUME.

Abbott v. Eggart—Homestead—June 5, 1915—Affirmed.	Aitchison, Robert M.—Desert Land—October 29, 1915—Affirmed.
Abell, Aurel J.—Homestead—March 23, 1915—Remanded.	Akeson, Ole, <i>et al.</i> —Homestead—December 13, 1915—Motion Denied.
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Adams, John N.—Homestead—December 18, 1915—Affirmed.	Albright, Charles A.—Report—May 6, 1915—Petition Denied.
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- Alvin, John—Homestead—January 18, 1916—Remanded.
- Ammer *v.* Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Amon, Moses A.—Homestead—March 23, 1915—Remanded.
- Anderson, Carl E.—Homestead—January 22, 1916—Reversed.
- Anderson, Evelyn N.—Homestead—April 29, 1915—Affirmed.
- Anderson, Evelyn N.—Homestead—June 12, 1915—Modified.
- Anderson, Fred, Whitaker, D. R., transferee—Homestead—March 6, 1915—Motion Remanded.
- Anderson, Harvey R.—Homestead—December 21, 1915—Affirmed.
- Anderson, Helen M.—Desert Land—May 11, 1915—Affirmed.
- Anderson, Irving—Mineral—August 23, 1915—Affirmed.
- Anderson, Jens, Hulett, H. P., transferee—Homestead—March 6, 1915—Motion Remanded.
- Anderson, Lester W.—Homestead—January 31, 1916—Affirmed.
- Anderson, Mary M.—Homestead—April 26, 1915—Motion Denied.
- Anderson, Wallace W.—Report—November 19, 1915—Affirmed.
- Anderson, William—Homestead—July 26, 1915—Remanded.
- Anderson, William J.—Homestead—April 29, 1915—Letter to Reclamation Service.
- Anderson, William J.—Homestead—July 23, 1915—Vacated.
- Anderson *v.* Heirs of Wyatt—Homestead—September 30, 1915—Affirmed.
- Anderson *v.* Heirs of Wyatt—Homestead—November 15, 1915—Instructions.
- Anderson *v.* Northern Pacific Ry. Co.—Timber and Stone—June 29, 1915—Motion Denied.
- Anderson *v.* Rider—Homestead—February 26, 1916—Affirmed.
- Anderson *v.* Union Land & Stock Co.—Reservoir—August 18, 1915—Modified.
- Anderson *v.* Union Land & Stock Co.—Reservoir—October 23, 1915—Request Granted.
- Anderson *v.* Wright—Homestead—August 9, 1915—Affirmed.
- Andrews, F. L., Attorney in Fact for F. L. Huston—Lieu Selection—November 13, 1915—Motion Denied.
- Andrews, Fred L.—Homestead—January 20, 1916—Reversed.
- Andrews, Harry L.—Homestead—September 27, 1915—Affirmed.
- Andrews, Martha B.—Desert Land—February 16, 1916—Affirmed.
- Andrews, O. S., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Appelonie, Joseph—Mineral—August 6, 1915—Reversed.
- Applegate *v.* Monahan—Homestead—January 26, 1916—Affirmed.
- Appollenia *v.* Phillips—Homestead—March 27, 1915—Affirmed.
- Arata, Pastor A. H.—Soldiers' Additional—February 29, 1916—Affirmed.
- Arkansas, State of, G. B. Dickson, transferee—Selection—January 19, 1916—Dismissed.
- Arkills, Francis J.—Homestead—April 21, 1915—Affirmed.
- Armijo *v.* Klin—Homestead—April 8, 1915—Affirmed.
- Armstrong, Henry, *et al.*—Homestead—May 3, 1915—Affirmed.
- Armstrong, Robert—Homestead—August 3, 1915—Affirmed.
- Armstrong, Robert L.—Homestead—June 12, 1915—Affirmed.
- Arneson, Louis—Homestead—January 22, 1916—Reversed.
- Arnold, David A.—Homestead—June 5, 1915—Remanded.
- Arnold, John N.—Homestead—March 23, 1915—Remanded.
- Arnold, William W.—Homestead—December 14, 1915—Affirmed.
- Arnold, William W.—Homestead—January 29, 1916—Motion Denied.
- Arnold *v.* Rue—Homestead—January 31, 1916—Affirmed.
- Arnott *v.* Smith—Desert Land—May 26, 1915—Motion Denied.
- Arthun, Helmert O.—Homestead—May 11, 1915—Affirmed.
- Arthun, Helmert O.—Homestead—June 19, 1915—Motion Modified.
- Assiniboine Irrigation Co.—Desert Land—February 16, 1916—Affirmed.
- Athey, Lawrence F.—Homestead—February 10, 1916—Reversed.
- Ator, Henry—Desert Land—October 18, 1915—Letter to Reclamation Service.
- Ault, Franklin S.—Homestead—April 23, 1915—Motion Denied.
- Ault, F. S., devisee—Homestead—April 24, 1915—Affirmed.
- Aumiller *et al. v.* Howarth—Mineral—July 9, 1915—Affirmed.
- Aurand, Thomas—Homestead—July 26, 1915—Motion Denied.
- Austin, Howard, *et al.*—Homestead—July 23, 1915—Motion Denied.
- Austin Manhattan Consolidated Mining Co.—Mineral—June 30, 1915—Petition Granted.
- Austin, Stafford W., assignee—Soldiers' Additional—March 17, 1915—Remanded.

- Austin, Strafford W., assignee—Soldiers' Additional—February 16, 1916—Modified.
- Austin v. Huston *et al.*—Homestead—April 20, 1915—Affirmed.
- Avery, Allen—Desert Land—April 21, 1915—Affirmed.
- Axelson, James—Homestead—February 16, 1916—Affirmed.
- Axness v. Reichard—Homestead—November 13, 1915—Affirmed.
- Ayers, A. L., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Ayers, William, Northwest Timber Co., transferee (2 cases)—Report—January 29, 1916—Reversed.
- Aztec Land & Cattle Co. (2 cases)—Lieu Selection—January 26, 1916—Affirmed.
- Aztec Land & Cattle Co.—Lieu Selection—January 29, 1916—Dismissed.
- Azure Mining Co.—Mineral—July 28, 1915—Affirmed.
- Baar v. Hoyt—Homestead—January 26, 1916—Affirmed.
- Baca v. Baca—Homestead—January 27, 1915—Affirmed.
- Bachstein, Harry A., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Bagola v. Coffey *et al.*—Indian Allotment—April 23, 1915—Affirmed.
- Bahde v. Heirs of Kruger—Homestead—July 15, 1915—Affirmed.
- Bahde v. Heirs of Kruger—Homestead—December 15, 1915—Motion Denied.
- Bahde v. Heirs of Kruger—Homestead—January 26, 1916—Motion Denied.
- Bailey, George H., assignee of Griswold—Soldiers' Additional—August 4, 1915—Motion Denied.
- Bailey v. Lenherr—Homestead—February 10, 1916—Affirmed.
- Baker, Arnold G.—Homestead—January 20, 1916—Reversed.
- Baker, C. Walter—Homestead—September 27, 1915—Remanded.
- Baker, Fred O.—Homestead—January 20, 1916—Reversed.
- Baker, Thomas E.—Homestead—January 20, 1916—Reversed.
- Bakken, Theodore S.—Homestead—January 20, 1916—Reversed.
- Baldwin, George B., *et al.* (2 cases)—Homestead—November 19, 1915—Motion Denied.
- Baldwin, George E.—Homestead—January 31, 1916—Affirmed.
- Baldwin, J. Merritt—Timber and Stone—August 6, 1915—Affirmed.
- Baldwin, J. Merritt—Timber and Stone—October 1, 1915—Motion Denied.
- Baldwin v. Chandler—Homestead—September 3, 1915—Affirmed.
- Baldwin v. Haines—Homestead—September 3, 1915—Affirmed.
- Baldwin v. Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Ball, Manson C.—Homestead—March 16, 1915—Reversed.
- Ballard, Earnest E.—Homestead—March 27, 1915—Motion Denied.
- Baltazar v. Beale—Desert Land—October 18, 1915—Affirmed.
- Banks, Charles B.—Desert Land—June 30, 1915—Modified.
- Banks v. Bissegger—Homestead—May 26, 1915—Affirmed.
- Bannon v. Sample—Homestead—June 23, 1915—Affirmed.
- Bantz, John D.—Homestead—April 17, 1915—Remanded.
- Barber Lumber Co. v. Centerville Mining & Milling Co.—Mineral—July 23, 1915—Affirmed.
- Barber Lumber Co. v. Centerville Mining & Milling Co.—Mineral—January 15, 1916—Motion Denied.
- Barbey v. Ruff—Homestead—July 28, 1915—Affirmed.
- Barfield, Edward M.—Military Warrant—March 3, 1915—Affirmed.
- Barkelew v. Olson—Homestead—April 20, 1915—Motion Denied.
- Barnes, Frank—Homestead—January 31, 1916—Affirmed.
- Barney v. West—Homestead—July 31, 1915—Affirmed.
- Barrenda Land & Irrigation Co. *et al.*—Reservoir—June 26, 1915—Affirmed.
- Barrett v. Northern Pacific Ry. Co.—Homestead—March 22, 1915—Modified.
- Barrett v. Watson—Homestead—April 17, 1915—Motion Denied.
- Barrette & Barrette—Timber and Stone—April 19, 1915—Affirmed.
- Barris, Stella M.—Homestead—November 17, 1915—Reversed.
- Bartell, William F.—Homestead—March 30, 1915—Remanded.
- Barthel v. Thompson—Homestead—January 29, 1916—Affirmed.
- Bartholet, John—Report—June 29, 1915—Affirmed.
- Bartholoma v. McClure—Isolated Tract—June 28, 1915—Affirmed.
- Bartlett, Nellie L.—Homestead—December 7, 1915—Modified.
- Barzie, Bonnar, *et al.*—Indian Allotment—June 12, 1915—Affirmed.

- Bass v. Powell—Homestead—June 12, 1915—Affirmed.
- Bate, John T.—Desert Land—January 5, 1916—Affirmed.
- Batterton, Farinda O.—Homestead—March 17, 1915—Reversed.
- Baxter, Rufus—Homestead—March 27, 1915—Remanded.
- Bayles, John M.—Homestead—May 29, 1915—Affirmed.
- Beach, H. A.—Desert Land—July 26, 1915—Remanded.
- Beale, Florence G.—Desert Land—May 26, 1915—Returned.
- Beard v. Bradley—Homestead—February 29, 1916—Affirmed.
- Becker, John E.—Homestead—June 12, 1915—Letter to Reclamation Service.
- Becker, John E.—Homestead—September 3, 1915—Affirmed.
- Beckman v. Tady—Desert Land—January 29, 1916—Motion Denied.
- Beckstead v. Barnes—Desert Land—February 26, 1916—Affirmed.
- Becwar v. Brewer—Homestead—August 9, 1915—Affirmed.
- Bedient, Eugene—Homestead—March 31, 1915—Affirmed.
- Bedient, Eugene—Homestead—June 12, 1915—Motion Denied.
- Bedient, Eugene—Homestead—January 26, 1916—Remanded.
- Beeler, William C., assignee—Soldiers' Additional—February 19, 1916—Affirmed.
- Beighle v. Northern Pacific Ry. Co.—Mineral—March 6, 1915—Reversed.
- Beighle v. Northern Pacific Railway Co.—Selection—July 17, 1915—Motion Denied.
- Beiser, J. H.—Homestead—May 18, 1915—Affirmed.
- Belford, William T.—Petition—March 31, 1915—Affirmed.
- Belgarde, Joseph, sr. (2 cases)—Indian Allotment—April 29, 1915—Affirmed.
- Belgarde, Michael, for O. L. Belgarde—Indian Allotment—April 29, 1915—Affirmed.
- Belgarde, Michael, for L. J. Belgarde—Indian Allotment—June 12, 1915—Affirmed.
- Bell, Emma V.—Homestead—August 5, 1915—Modified.
- Bell, Mertie C.—Homestead—September 7, 1915—Affirmed.
- Bell, Thomas—Homestead—March 27, 1915—Remanded.
- Bell v. Parker—Mineral—February 18, 1916—Modified.
- Bellgardt, Albert—Homestead—January 26, 1916—Vacated.
- Beman, Nancy J., assignee—Soldiers' Additional—June 23, 1915—Motion Denied.
- Benabides, Telesforo—Homestead—November 3, 1915—Certiorari Denied.
- Benham, Henry A.—Homestead—July 20, 1915—Petition Denied.
- Benjamin, Wesley—Homestead—August 27, 1915—Affirmed.
- Bennett, Clara E., administratrix—Desert Land—March 31, 1915—Affirmed.
- Benson, August—Desert Land—September 27, 1915—Remanded.
- Bentley, Arthur C.—Homestead—March 22, 1915—Remanded.
- Bentley, Arthur C.—Indian—August 14, 1915—Modified.
- Bentley, Louis D.—Homestead—March 22, 1915—Remanded.
- Bentz, Fred—Timber and Stone—June 19, 1915—Affirmed.
- Bentz, Lizzie—Homestead—April 29, 1915—Affirmed.
- Berg, Fred—Homestead—January 20, 1916—Reversed.
- Berg v. Hanson—Homestead—July 27, 1915—Affirmed.
- Berger v. Northern Pacific Ry. Co.—Homestead—March 17, 1915—Affirmed.
- Bergeson, Burt—Survey—April 26, 1915—Affirmed.
- Bergsieker v. Penkake—Homestead—April 27, 1915—Affirmed.
- Bergstrom v. Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Berke v. Bowles—Homestead—July 27, 1915—Affirmed.
- Berke v. Bowles—Homestead—September 27, 1915—Motion Denied.
- Berndt, Carl—Homestead—January 22, 1916—Reversed.
- Berst v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Bestul v. Warren—Homestead—September 7, 1915—Affirmed.
- Bevilacqua, Giovanni—Mineral—February 26, 1916—Affirmed.
- Bice, Lewis H.—Homestead—November 23, 1915—Reversed.
- Bidwell v. Mayhew—Mineral—August 4, 1915—Affirmed.
- Bill, Joseph—Homestead—June 17, 1915—Letter to Reclamation Service.
- Bill, Joseph—Homestead—August 4, 1915—Affirmed.
- Billett, H. A., Hulett, H. P., transferee—Homestead—March 6, 1915—Motion Remanded.
- Billings, Callie L.—Homestead—January 31, 1916—Remanded.
- Bins, John G.—Desert Land—February 26, 1916—Affirmed.
- Bishop, Archibald—Homestead—March 31, 1915—Remanded.

- Bishop, Leroy J.—Homestead—April 29, 1915—Reversed.
- Bissell, Stanley H.—Homestead—November 16, 1915—Affirmed.
- Bitner, Charles—Homestead—April 23, 1915—Affirmed.
- Black, Ernest G.—Homestead—January 22, 1916—Reversed.
- Black Hills & Denver Gold Mining Co.—Mineral—August 9, 1915—Reversed.
- Black Hills & Denver Gold Mining Co.—Mineral—November 15, 1915—Motion Denied.
- Blake and Peavey—Homestead—July 8, 1915—Affirmed.
- Blake v. White—Homestead—February 16, 1916—Affirmed.
- Blanchard, Arthur S.—Homestead—March 9, 1915—Affirmed.
- Blanchard, Dick E.—Homestead—March 22, 1915—Remanded.
- Blanche, Emma I.—Report—April 12, 1915—Affirmed.
- Blanke, Edwin S.—Homestead—July 17, 1915—Affirmed.
- Blankenship, H. B., *et al.*—Homestead—November 19, 1915—Modified.
- Blazer, Almer N.—Soldiers' Homestead—April 6, 1915—Motion Allowed.
- Blocher, Israel J.—Homestead—August 6, 1915—Remanded.
- Blood v. Hahn—Homestead—September 3, 1915—Affirmed.
- Blood v. McCoy—Homestead—September 3, 1915—Affirmed.
- Blood v. Ross—Homestead—September 3, 1915—Affirmed.
- Blood v. Oedekoven—Homestead—September 3, 1915—Affirmed.
- Blood v. Santa Fe Pacific Railway Co.—Lieu Selection—September 3, 1915—Affirmed.
- Bobst, Miles, *et al.*—Homestead—December 7, 1915—Reversed.
- Bock, James E.—Homestead—July 22, 1915—Affirmed.
- Bohannon, Mary E.—Homestead—August 5, 1915—Affirmed.
- Bolcof, Ernest, I. K. Venator, transferee—Desert Land—July 26, 1915—Reversed.
- Boles v. Yeates—Homestead—February 7, 1916—Affirmed.
- Bollinger v. Douthitt—Homestead—July 30, 1915—Motion Denied.
- Bond v. Maloney—Homestead—April 27, 1915—Affirmed.
- Bone, Green B., Heirs of—Homestead—June 23, 1915—Affirmed.
- Book Cliffs Ditch—Right of Way—August 27, 1915—Affirmed.
- Booth, Arthur S.—Homestead—January 26, 1916—Vacated.
- Booth, James N.—Desert Land—January 29, 1916—Modified.
- Booth, James N.—Desert Land—July 22, 1915—Affirmed.
- Booth, James N.—Desert Land—September 3, 1915—Motion Denied.
- Booth v. Boeschen—Homestead—August 11, 1915—Affirmed.
- Bostic, Carrie—Desert Land—April 23, 1915—Modified.
- Botkin, Ida M.—Report—November 3, 1915—Affirmed.
- Botkin, Ida M.—Report—January 28, 1916—Motion Denied.
- Botkin, Jonathan A.—Report—November 3, 1915—Affirmed.
- Botkin, Jonathan A.—Report—January 28, 1916—Motion Denied.
- Botts v. Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Botwin v. Wise—Homestead—September 4, 1915—Modified and Remanded.
- Botwin v. Wise—Homestead—December 7, 1915—Motion Denied.
- Bourgeois, Alexander A.—Homestead—October 1, 1915—Appeal Dismissed.
- Bowen v. McComb—Desert Land—October 29, 1915—Affirmed.
- Bowles, George, H. P. Hulett, transferee—Homestead—March 6, 1915—Motion Remanded.
- Bowman, Archie W., assignee—Soldiers' Additional—January 29, 1916—Reversed.
- Boyce v. Northern Pacific Ry. Co.—Homestead—March 17, 1915—Affirmed.
- Boyd, William C.—Timber and Stone—September 3, 1915—Vacated.
- Boyle v. Ives—Desert Land—May 14, 1915—Motion Denied.
- Boyle v. Smith—Desert Land—May 14, 1915—Motion Denied.
- Bradley, Wayne E.—Homestead—February 14, 1916—Affirmed.
- Braiford, George A.—Homestead—April 17, 1915—Affirmed.
- Brandt v. Cox—Homestead—May 3, 1915—Motion Denied.
- Braun, Thomas J.—Homestead—May 10, 1915—Reversed.
- Bray and Rask—Homestead—April 29, 1915—Motion Denied.
- Bray, John—Report—February 29, 1916—Affirmed.
- Brayner v. Northern Pacific Ry. Co.—Homestead—September 24, 1915—Affirmed.
- Brayner v. Northern Pacific Ry. Co.—Homestead—November 23, 1915—Motion Denied.
- Brenna v. Northern Pacific Ry. Co.—Homestead—December 18, 1915—Affirmed.

- Brennan, Hannah—Timber and Stone—September 7, 1915—Affirmed.
- Bretzke, William—Homestead—March 23, 1915—Remanded.
- Breuhau, Ernest—Homestead—January 31, 1916—Affirmed.
- Breunig, Walter S.—Homestead—April 27, 1915—Affirmed.
- Brewer, Earl E.—Homestead—December 1, 1915—Affirmed.
- Brewer, Earl M.—Homestead—July 10, 1915—Affirmed.
- Brewster, Anna R.—Report—May 12, 1915—Motion Denied.
- Brezina v. Loy—Homestead—August 6, 1915—Hearing Ordered.
- Brislin, Daniel J.—Homestead—July 17, 1915—Affirmed.
- Brislin, Daniel J.—October 11, 1915—Letter to Geological Survey.
- Britton, G. C.—Coal—April 27, 1915—Remanded.
- Brode *et al.* v. Gosslin *et al.*—Lieu Se-lection—July 23, 1915—Affirmed.
- Bromley v. Northern Pacific Ry. Co.—Homestead—March 30, 1915—Motion Denied.
- Bromley v. Northern Pacific Ry. Co.—Homestead—June 8, 1915—Motion Denied.
- Brooks, George B.—Homestead—November 13, 1915—Affirmed.
- Brooks, Llewelyn B.—Report—October 26, 1915—Affirmed.
- Brooks v. Gregg—Desert Land—November 23, 1915—Reversed.
- Brooks v. Gregg—Desert Land—January 18, 1916—Motion Denied.
- Broslin, Daniel, J.—Homestead—October 27, 1915—Petition Denied.
- Brouse, Ernest F.—Desert Land—February 5, 1916—Affirmed.
- Brown, Benjamin E., for Grace E. Brown—Indian Allotment—December 22, 1915—Affirmed.
- Brown, Edward, Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Brown, James E.—Homestead—July 20, 1915—Affirmed.
- Brown, John D.—Homestead—October 23, 1915—Affirmed.
- Brown, Mahlon—Homestead—August 17, 1915—Motion Modified.
- Brown, Martina—Homestead—September 14, 1915—Affirmed.
- Brown, Martina—Homestead—January 29, 1916—Motion Modified.
- Brown, Murray M.—Homestead—September 27, 1915—Affirmed.
- Brown, Murray M.—Homestead—December 17, 1915—Motion Denied.
- Brown, Pearl B.—Desert Land—February 14, 1916—Affirmed.
- Brown, Stena V.—Homestead—October 27, 1915—Motion Denied.
- Brown, William G.—Homestead—January 23, 1916—Affirmed.
- Brown v. Baker—Timber and Stone—November 23, 1915—Affirmed.
- Brown v. Black—Desert Land—July 23, 1915—Affirmed.
- Brown v. Christensen—Homestead—March 31, 1915—Reversed.
- Brown v. Christensen—Homestead—July 8, 1915—Motion Denied.
- Brown v. Learn—Homestead—June 28, 1915—Affirmed.
- Brown v. Martell—Indian Allotment—January 31, 1916—Affirmed.
- Browning, J. D., *et al.*—Coal—June 30, 1915—Affirmed.
- Bruce v. Violet—Desert Land—April 14, 1915—Motion Denied.
- Bruseau, Oliver—Homestead—July 8, 1915—Affirmed.
- Bryan, Charles W. B.—Homestead—January 4, 1916—Reversed.
- Bryant, David R.—Homestead—November 3, 1915—Reversed.
- Buck, Henry William E.—Homestead—August 23, 1915—Affirmed.
- Buck, Horatio M., *et al.*—Desert Land—April 14, 1915—Affirmed.
- Buck, Horatio M.—Desert Land—July 26, 1915—Motion Denied.
- Buckallew v. Northern Pacific Ry. Co.—Homestead—December 18, 1915—Affirmed.
- Buckley, Annie N.—Desert Land—September 8, 1915—Reversed.
- Buckley, John W.—Coal Declaratory Statement—October 23, 1915—Affirmed.
- Budge v. Budge—Homestead—April 14, 1915—Affirmed.
- Buffington v. Short—Timber and Stone—September 14, 1915—Affirmed.
- Buffington v. Short—Timber and Stone—November 23, 1915—Motion Denied.
- Buford, Simon E.—Homestead—March 31, 1915—Affirmed.
- Bugas, A. P., assignee of Fielder—Soldiers' Additional—October 1, 1915—Remanded.
- Bunnell, Arabella E.—Desert Land—August 6, 1915—Reversed.
- Bunney, John G.—Desert Land—May 17, 1915—Reversed.
- Buob, Benjamin—Homestead—September 30, 1915—Affirmed.
- Buob, Benjamin—Homestead—November 23, 1915—Motion Denied.
- Buob, John W.—Homestead—September 30, 1915—Affirmed.
- Buob, John W.—Homestead—November 23, 1915—Motion Denied.
- Buob, Samuel—Homestead—September 30, 1915—Affirmed.

- Buob, Samuel—Homestead—November 23, 1915—Motion Denied.
- Buraa, Mary M.—Homestead—August 6, 1915—Reversed.
- Burdick, George W.—Homestead—February 25, 1916—Reversed.
- Burdick v. Hamar—Homestead—November 24, 1915—Affirmed.
- Burditt, Clara—Homestead—December 24, 1915—Affirmed.
- Burger v. Le Clair—Homestead—April 14, 1915—Affirmed.
- Burgeson, Burt—Survey—June 29, 1915—Motion Denied.
- Burgeson, Burt—Homestead—December 13, 1915—Motion Denied.
- Burgess, Wilnot J.—Homestead—December 21, 1915—Affirmed.
- Burgess, Wilnot J.—Homestead—February 5, 1916—Motion Denied.
- Burgund, George J.—Homestead—May 29, 1915—Remanded.
- Burley, Jacob, F. W. McReynolds, assignee—Soldiers' Additional—August 30, 1915—Affirmed.
- Burns, William H.—Desert Land—March 27, 1915—Reversed.
- Burns v. Hamann—Homestead—September 27, 1915—Affirmed.
- Burnson v. Keim—Homestead—December 7, 1915—Affirmed.
- Burroughs, Frank A.—Homestead—February 18, 1916—Reversed.
- Burtis, Cole C.—Timber and Stone—December 13, 1915—Affirmed.
- Burton, Bettie V.—Homestead—November 30, 1915—Affirmed.
- Burton, Bettie V.—Homestead—January 19, 1916—Motion Denied.
- Busacker v. Davis—Homestead—May 20, 1915—Certiorari Denied.
- Busacker v. Davis—Homestead—January 24, 1916—Petition Denied.
- Bush v. Austill *et al.*—Desert Land—September 18, 1915—Reversed.
- Bush v. Austill *et al.*—Desert Land—December 13, 1915—Motion Denied.
- Butler, Patrick—Timber and Stone—March 6, 1915—Instructions.
- Butler v. Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Butler v. St. John—Desert Land—August 4, 1915—Affirmed.
- Buzick, Edwin—Homestead—March 9, 1915—Affirmed.
- Byers v. Northern Pacific Ry. Co.—Lieu Selection—July 28, 1915—Reversed.
- Byron, Heirs of H. R.—Desert Land—May 3, 1915—Motion Allowed.
- Byron v. Andrews—Homestead—August 26, 1915—Reversed.
- Byron v. Andrews—Homestead—November 19, 1915—Motion Denied.
- Cabbage v. Torgerson—Homestead—January 4, 1916—Affirmed.
- Calderwood, John—Homestead—May 29, 1915—Remanded.
- Calhoun, Harry O.—Homestead—August 21, 1915—Motion Modified.
- California, State of (2 cases)—Selection—March 6, 1915—Affirmed.
- California, State of (4 cases)—Selections—March 9, 1915—Affirmed.
- California, State of—Selection—April 22, 1915—Affirmed.
- California, State of—Selection—May 20, 1915—Remanded.
- California, State of—Selection—May 20, 1915—Motion Denied.
- California, State of (4 cases)—Selection—May 27, 1915—Remanded.
- California, State of (2 cases)—Selection—June 19, 1915—Letter to Reclamation Service.
- California, State of—Selection—June 28, 1915—Motion Allowed.
- California, State of (2 cases)—Selection—July 2, 1915—Vacated.
- California, State of, *et al.*—Selection—July 23, 1915—Reversed.
- California, State of—Selection—July 23, 1915—Remanded.
- California, State of—Selections (Lake Protests)—August 14, 1915—Instructions.
- California, State of, *et al.*—Selection—August 26, 1915—Motion Denied.
- California, State of, *et al.*—Selection—August 26, 1915—Petition Allowed.
- California, State of—Selection—September 11, 1915—Affirmed.
- California, State of—Selection—October 21, 1915—Remanded.
- California, State of—Selection—November 3, 1915—Affirmed.
- California, State of, *et al.*—Selection—November 15, 1915—Remanded.
- California, State of—Selection—December 31, 1915—Affirmed.
- California, State of, L. J. Abrams, transferee (4 cases)—Selection—March 17, 1915—Affirmed.
- California, State of, L. J. Abrams, transferee—Selection—April 30, 1915—Affirmed.
- California, State of, L. J. Abrams, transferee—Selection—May 26, 1915—Motion Allowed.
- California, State of, L. J. Abrams, transferee (3 cases)—Selection—May 29, 1915—Motion Allowed.
- California, State of, M. J. Ashurst, transferee—Selection—March 17, 1915—Affirmed.
- California, State of, M. J. Ashurst, transferee—Selection—June 11, 1915—Instructions.

- California, State of, Balfour-Guthrie Investment Co.—Swamp—April 17, 1915—Affirmed.
- California, State of, E. L. Barnard, transferee—Selection—August 14, 1915—Affirmed.
- California, State of, E. L. Barnard, transferee—Selection—October 23, 1915—Motion Denied.
- California, State of, H. W. Barnett, transferee—Selection—May 22, 1915—Remanded.
- California, State of, W. E. Beck, transferee—Selection—June 23, 1915—Affirmed.
- California, State of, W. E. Beck, transferee—Selection—July 27, 1915—Motion Denied.
- California, State of, W. E. Beck, transferee—Selection—October 7, 1915—Motion Denied.
- California, State of, T. H. Benton, transferee—Selection—June 19, 1915—Vacated.
- California, State of, W. A. Bolton, transferee—Selection—February 4, 1916—Affirmed.
- California, State of, G. W. Bothwell, transferee—Selection—April 20, 1915—Reversed.
- California, State of, Diamond Match Co.—Selection—May 27, 1915—Remanded.
- California, State of, A. E. Dickinson, transferee—Selection—December 1, 1915—Motion Denied.
- California, State of, John Dumford, transferee—Selection—July 27, 1915—Motion Denied.
- California, State of, Annie Fabian, transferee—Selection—March 17, 1915—Affirmed.
- California, State of, Annie Fabian—Selection—May 27, 1915—Motion Allowed.
- California, State of, B. G. Falvey, transferee—Selection—July 14, 1915—Motion Denied.
- California, State of, Frick, transferee—State Selection—December 17, 1915—Petition Denied.
- California, State of, G. S. Eldred, transferee—Selection—June 1, 1915—Vacated.
- California, State of, William Ellery, transferee—Selection—May 27, 1915—Remanded.
- California, State of, Honey Lake Valley Co.—Selection—April 6, 1915—Affirmed.
- California, State of, Honey Lake Valley Co.—Selection—July 14, 1915—Motion Denied.
- California, State of, Honey Lake Valley Co., transferee—Selection—July 26, 1915—Motion Denied.
- California, State of, Honey Lake Valley Co., transferee—Selection—September 8, 1915—Petition Denied.
- California, State of, J. C. Kelly, transferee—Selection—March 17, 1915—Affirmed.
- California, State of, J. L. Klicks, transferee—Selection—May 15, 1915—Letter to Geological Survey.
- California, State of, J. B. Konreid, transferee (2 cases)—Selection—July 27, 1915—Motion Denied.
- California, State of, Lake, Intervener—Selection—October 1, 1915—Affirmed.
- California, State of, A. J. Lowell, transferee—Selection—June 28, 1915—Affirmed.
- California, State of, Serafino Maggini, transferee—Selection—March 17, 1915—Affirmed.
- California, State of, Serafino Maggini, transferee—State Selection—April 27, 1915—Motion Denied.
- California, State of, Serafino Maggini, transferee—Selection—May 27, 1915—Motion Allowed.
- California, State of, McCloud Lumber Co., transferee—Selection—October 7, 1915—Affirmed.
- California, State of, L. L. McKisick, transferee—Selection—April 6, 1915—Affirmed.
- California, State of, L. L. McKisick, transferee—Selection—July 14, 1915—Motion Denied.
- California, State of, Miller & Lux, transferee (2 cases)—Selection—May 27, 1915—Motion Allowed.
- California, State of, Peter Nelson, transferee—State Selection—February 18, 1916—Affirmed.
- California, State of, Nevada & California Land & Livestock Co., transferee—Selection—March 17, 1915—Affirmed.
- California, State of, North California Power Co. (8 cases)—Selection—May 27, 1915—Remanded.
- California, State of, North California Power Co., transferee—Selection—May 29, 1915—Remanded.
- California, State of, Orestimba Land Co., transferee—Selection—March 6, 1915—Affirmed.
- California, State of, Overland Trust and Realty Co., transferee—Selection—April 10, 1915—Motion Denied.
- California, State of, J. E. Pardee, transferee—Selection—April 6, 1915—Affirmed.
- California, State of, J. E. Pardee, transferee—Selection—July 14, 1915—Motion Denied.
- California, State of, H. L. Pierson, transferee—Selection—April 29, 1915—Affirmed.

- California, State of, H. L. Pierson, transferee (2 cases)—Selection—June 1, 1915—Vacated.
- California, State of, H. L. Pierson, transferee—Selection—September 3, 1915—Motion Denied.
- California, State of, Red River Lumber Co., transferee—Selection—August 3, 1915—Letter to Geological Survey.
- California, State of, Santa Rosa Bank, transferee—Selection—May 26, 1915—Affirmed.
- California, State of, C. A. Smith Timber Co., transferee—Selection—March 17, 1915—Motion Denied.
- California, State of, C. A. Smith, transferee (3 cases)—Selection—April 26, 1915—Returned.
- California, State of, Levi Smith, transferee—Selection—October 15, 1915—Reversed.
- California, State of, W. L. Smith, transferee—Selection—June 1, 1915—Vacated.
- California, State of, H. F. Sprague, intervener—Selection—October 7, 1915—Affirmed.
- California, State of, Standard Investment Co., transferee—Selection—March 17, 1915—Affirmed.
- California, State of, Standard Investment Co., transferee—Selection—May 17, 1915—Motion Modified.
- California, State of, Stone's Estate, transferee—Selection—March 6, 1915—Affirmed.
- California, State of, G. A. Sturtevant, transferee—Selection—March 6, 1915—Affirmed.
- California, State of, Union Lumber Co., transferee—Selection—March 6, 1915—Affirmed.
- California, State of, Union Lumber Co., transferee—Selection—June 4, 1915—Modified.
- California, State of, C. L. Walker, transferee—Selection—September 14, 1915—Affirmed.
- California, State of, T. B. Walker, transferee (2 cases)—Selection—May 27, 1915—Remanded.
- California, State of, H. C. Warren, transferee—Selection—July 30, 1915—Affirmed.
- California, State of, Weed Lumber Co., transferee—State Selection—February 18, 1916—Motion Allowed.
- California, State of, S. P. Wible, transferee—Selection—April 20, 1915—Affirmed.
- California, State of, v. Leach—Selection—May 20, 1915—Affirmed.
- California, State of, v. Mascovich—Homestead—November 5, 1915—Motion Denied.
- Calkins, G. C., Hulett, H. P., transferee—Homestead—March 6, 1915—Motion Remanded.
- Callaghan, John—Homestead—December 15, 1915—Affirmed.
- Callahan, Henry A.—Homestead—April 12, 1915—Affirmed.
- Callahan, L. W., and Great Northern Ry. Co.—Selection—February 23, 1916—Reversed.
- Callen v. Warren—Desert Land—January 26, 1916—Affirmed.
- Cameron, Ralph H. (2 cases)—Mineral—August 4, 1915—Affirmed.
- Cameron v. Jackson—Homestead—February 4, 1916—Affirmed.
- Campbell, Alvin—Homestead—November 5, 1915—Affirmed.
- Campbell, Hugh E.—Soldiers' additional—June 30, 1915—Affirmed.
- Campbell, Richard, Bolinger & Co., transferee—Homestead—April 29, 1915—Reversed.
- Campbell v. Northern Pacific Ry. Co.—Homestead—July 8, 1915—Affirmed.
- Campbell v. Northern Pacific Ry. Co.—Homestead—October 29, 1915—Motion Denied.
- Canfield, George S.—Report—April 13, 1915—Affirmed.
- Canfield, Nellie F.—Report—April 13, 1915—Affirmed.
- Canon v. Southern Pacific Ry. Co.—Desert Land—April 21, 1915—Motion Denied.
- Cardine, Joseph L.—Survey—July 23, 1915—Instructions.
- Carey, Anna E.—Homestead—March 17, 1915—Vacated.
- Carey v. Northern Pacific Ry. Co.—Selection—May 21, 1915—Certiorari Allowed.
- Carlson, Ernst G.—Homestead—March 27, 1915—Affirmed.
- Carlson, Johan H.—Homestead—April 27, 1915—Affirmed.
- Carlson, John R.—Homestead—July 31, 1915—Affirmed.
- Carman, John F.—Homestead—January 20, 1916—Reversed.
- Carmichael v. Butler—Desert Land—February 12, 1916—Affirmed.
- Carolan, Michael J.—Homestead—March 22, 1915—Remanded.
- Carothers, Charles A.—Desert Land—February 16, 1916—Certiorari Denied.
- Carson v. Parrish—Petition—March 18, 1915—Petition Denied.
- Carter v. Muetzel—Desert Land—November 5, 1915—Vacated.
- Carver v. Hummel—Desert Land—January 31, 1916—Affirmed.
- Cary, Henry B.—Homestead—January 31, 1916—Remanded.

- Casteel, Nathaniel O.—Homestead—January 29, 1916—Affirmed.
- Casey, Harry J.—Homestead—April 29, 1915—Reversed.
- Cassidy v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Cassidy v. Northern Pacific Ry. Co.—Homestead—March 22, 1915—Affirmed.
- Cassus, Polagio—Homestead—April 29, 1915—Motion Denied.
- Castator v. Hopkins—Homestead—February 5, 1916—Reversed.
- Casy, Ed.—Homestead—April 27, 1915—Affirmed.
- Cattnach, Eva M.—Homestead—August 6, 1915—Affirmed.
- Cause v. Phelps—Homestead—July 10, 1915—Affirmed.
- Causin v. Fuller—Homestead—April 29, 1915—Motion Denied.
- Cavanaugh, Patrick F.—Homestead—December 24, 1915—Affirmed.
- Cearley, Newton F.—Homestead—July 22, 1915—Petition Denied.
- Ceberly, Roy—Homestead—October 1, 1915—Affirmed.
- Center v. Northern Pacific Ry. Co.—Homestead—March 9, 1915—Affirmed.
- Central Pacific Ry. Co.—Selection—March 30, 1915—Affirmed.
- Central Pacific Ry. Co.—Selection—April 23, 1915—Affirmed.
- Central Pacific Ry. Co.—Selection—April 23, 1915—Motion Denied.
- Central Pacific Ry. Co.—Selection—May 27, 1915—Remanded.
- Central Pacific Ry. Co.—Selection—May 27, 1915—Motion Denied.
- Central Pacific Ry. Co.—Right of Way—August 17, 1915—Affirmed.
- Central Pacific Ry. Co.—Selection—October 15, 1915—Affirmed.
- Central Pacific Ry. Co.—Selection—January 4, 1916—Remanded.
- Central Pacific Ry. Co.—Selection—February 4, 1916—Vacated.
- Central Pacific Ry. Co.—Selection—February 29, 1916—Reversed.
- Certrite v. Riley—Desert Land—August 6, 1915—Modified.
- Cerutti, Pietro—Homestead—June 23, 1915—Petition Denied.
- Cerveny, Mary A.—Desert Land—June 5, 1915—Remanded.
- Cerveny, William F.—Desert Land—June 5, 1915—Remanded.
- Chamberlain, E. R., assignee—Soldiers' Additional—January 29, 1916—Affirmed.
- Chamberlain v. Jensen—Homestead—March 27, 1915—Petition Denied.
- Champe, Leonard, administrator—Report—November 3, 1915—Affirmed.
- Champe, Leonard—Report—January 28, 1916—Motion Denied.
- Chance, Fannie J.—Homestead—June 28, 1915—Reversed.
- Chandler, John, assignee—Soldiers' Additional—April 21, 1915—Affirmed.
- Chaney, David, Heirs of—Homestead—February 4, 1916—Certiorari Denied.
- Chaney, Heirs of, v. Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Chapman, John P.—Homestead—September 14, 1915—Reversed.
- Chapman, Joseph, Roberts, Elizabeth, transferee—Homestead—March 6, 1915—Motion Remanded.
- Chapman, Joseph, Wisconsin Central Ry. Co.—Homestead—May 15, 1915—Instructions.
- Chappell v. Creamer—Homestead—August 6, 1915—Reversed.
- Chappell v. Creamer—Homestead—October 29, 1915—Petition Denied.
- Charouleau v. Sutherland—Homestead—November 30, 1915—Affirmed.
- Chase, Benjamin, *et al.*—Homestead—December 13, 1915—Affirmed.
- Chase, Elmer—Homestead—October 4, 1915—Reversed.
- Cheatham, Sadie—March 9, 1915—Letter to Reclamation Service.
- Cheatham, Sadie—Homestead—May 22, 1915—Vacated.
- Chewelak Marble Co.—Mineral—June 28, 1915—Reversed.
- Chignik Coal Mining Co.—Coal—October 12, 1915—Affirmed.
- Childs, Orson C.—Desert Land—August 26, 1915—Reversed.
- Chinn v. Northern Pacific Ry. Co.—Selection—June 28, 1915—Modified.
- Chipman, N. P., assignee—Report—January 15, 1916—Affirmed.
- Chounard v. Staples—Homestead—February 12, 1916—Affirmed.
- Christensen, Andrew H., assignee—Soldiers' Additional—January 20, \*1916—Affirmed.
- Christenson, Willis B.—Homestead—January 31, 1916—Reversed.
- Christie v. St. Paul, Minneapolis & Manitoba Ry. Co.—Homestead—August 17, 1915—Affirmed.
- Christie v. St. Paul, Minneapolis & Manitoba Ry. Co.—Homestead—December 18, 1915—Motion Denied.
- City of Longmont (Copeland Reservoir)—Right of Way—March 16, 1915—Remanded.
- Clark, Alonzo M.—Homestead—April 14, 1915—Affirmed.
- Clarke, C. W.—Lieu Selection—May 27, 1915—Remanded.

- Clarke, C. W. (2 cases)—Lieu Selection—January 31, 1916—Affirmed.
- Clarke *v.* Halverson—Lieu Selection—January 4, 1916—Reversed.
- Clarke *v.* Halverson *et al.*—Lieu Selection—February 29, 1916—Motion Granted.
- Clay, Charles M.—Desert Land—February 26, 1916—Affirmed.
- Clay, Harriet E.—Homestead—August 27, 1915—Affirmed.
- Clay, Henry E.—Homestead—August 26, 1915—Affirmed.
- Clay, John E.—Homestead—August 13, 1915—Affirmed.
- Clearwater Co. State Bank *v.* Ricke—Homestead—August 21, 1915—Modified.
- Clearwater Co. State Bank *v.* Ricke—Homestead—November 13, 1915—Petition Denied.
- Cleary, Richard E., Heirs of—Homestead—June 29, 1915—Instructions.
- Clemons, J. H., assignee—Soldiers' Additional—April 29, 1915—Affirmed.
- Clemons, J. H.—Soldiers' Additional—June 12, 1915—Motion Denied.
- Cledenning *v.* Johnson—Homestead—August 13, 1915—Vacated and Remanded.
- Clinch, W. J., *et al.*—Mineral—May 11, 1915—Reversed.
- Cline, Crawford L.—Homestead—January 4, 1916—Reversed.
- Clyde, Henry C.—Homestead—August 13, 1915—Vacated and Remanded.
- Cobeaga, Miguel—Desert Land—November 23, 1915—Affirmed.
- Cochos *v.* Heirs of E. Cameron—Homestead—July 23, 1915—Affirmed.
- Cockrell, Columbus J.—Homestead—March 23, 1915—Remanded.
- Coddington *v.* Northern Pacific Ry. Co. *et al.*—Homestead—December 31, 1915—Affirmed.
- Coffey *v.* Everett—Homestead—December 13, 1915—Reversed.
- Colan *v.* Benton—Homestead—November 3, 1915—Certiorari Denied.
- Cole, Frederick W.—Homestead—January 3, 1916—Remanded.
- Cole, Harry A.—Homestead—March 8, 1915—Affirmed.
- Cole, Harry A.—Desert Land—March 8, 1915—Affirmed.
- Cole *v.* Southern Pacific R. R. Co.—Desert Land—April 30, 1915—Motion Denied.
- Cole *v.* Utley, assignee—Desert Land—May 3, 1915—Affirmed.
- Cole *v.* Utley—Desert Land—July 22, 1915—Motion Denied.
- Coles, Francis A.—Timber and Stone—December 31, 1915—Affirmed.
- Collinge, Frederick J.—Homestead—April 8, 1915—Returned.
- Collins, Edwill D.—Homestead—March 17, 1915—Petition Granted.
- Collins, George D.—Homestead—May 11, 1915—Affirmed.
- Collins, Isaac—Homestead—December 31, 1915—Modified.
- Collins, Jesse L.—Homestead—August 14, 1915—Affirmed.
- Collins, Peter M.—Lieu Selection—January 19, 1916—Petition Denied.
- Collins, T. E., assignee—Soldiers' Additional—March 25, 1915—Motion Remanded.
- Collins, Ted E., assignee—Soldiers' Additional—March 31, 1915—Motion Denied.
- Collins, Ted E.—Soldiers' Additional—April 20, 1915—Remanded.
- Collins *v.* Harvey—Homestead—January 26, 1916—Affirmed.
- Colon *v.* Benton—Homestead—May 27, 1915—Certiorari Denied.
- Colver, James—Desert Land—November 13, 1915—Reversed.
- Colvin & Welch *v.* Arnold—Desert Land—July 23, 1915—Motion Denied.
- Colvin & Welch *v.* Arnold (2 cases)—Desert Land—October 1, 1915—Petition Dismissed.
- Colvin, Lucile—Desert Land—July 30, 1915—Affirmed.
- Combs, A. L.—Desert Land—July 27, 1915—Affirmed.
- Comyns *v.* Northern Pacific Ry. Co.—Homestead—September 24, 1915—Affirmed.
- Comyns *v.* Northern Pacific Ry. Co.—Homestead—November 23, 1915—Motion Denied.
- Cone *v.* Hawkins—Homestead—May 3, 1915—Affirmed.
- Conklin, Claude R.—Homestead—March 27, 1915—Affirmed.
- Conklin, Claude R.—Desert Land—May 27, 1915—Motion Denied.
- Connolly, Annie—Homestead—July 23, 1915—Reversed.
- Connolly *v.* Sherman—Homestead—July 20, 1915—Reversed.
- Connolly *v.* Sherman—Desert Land—August 17, 1915—Motion Denied.
- Connolly *v.* Sherman—Desert Land—January 26, 1916—Motion Denied.
- Conover *et al.* *v.* Havens—Desert Land—August 4, 1915—Motion Denied.
- Conrad, William J.—Timber and Stone—January 19, 1916—Affirmed.
- Constitution Mining & Milling Co. *v.* Gilliland—Mineral—August 5, 1915—Affirmed.
- Converse *v.* Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Conway, William—March 8, 1915—Certiorari Allowed.

- Conway, William—Report—April 17, 1915—Affirmed.
- Conway, William—Report—June 11, 1915—Motion Denied.
- Cook, Alfred R.—Homestead—October 23, 1915—Reversed.
- Cook, George W.—Soldiers' Additional—July 2, 1915—Affirmed.
- Cook, George W., assignee—Soldiers' Additional—February 12, 1916—Affirmed.
- Cook, John A., assignee—Soldiers' Additional—February 16, 1916—Affirmed.
- Cook, John A., assignee—Soldiers' Additional—February 25, 1916—Affirmed.
- Cook, R. E., *et al.*—Homestead—June 28, 1915—Affirmed.
- Cook, Walter H.—Homestead—April 29, 1915—Affirmed.
- Cook, Walter H.—Homestead—June 11, 1915—Motion Denied.
- Cooley, Wilford G.—Homestead—May 6, 1915—Remanded.
- Cooper, G. S., J. L. Bradford, transferee—Homestead—August 30, 1915—Reversed.
- Cooper *et al.* *v.* Kuhn—Homestead—August 6, 1915—Motion Denied.
- Cope *v.* Berry—Homestead—February 16, 1916—Affirmed.
- Corbett Tunnel Claims—May 26, 1915—Not Proven.
- Corbett Tunnel Claims—July 2, 1915—Forwarded to Treasury—Finally Closed.
- Corgan, H. G., *v.* Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Corgan, Hugh, *v.* Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Corlew, Thomas D.—Homestead—January 31, 1916—Affirmed.
- Coster *v.* Gorman—Homestead—June 1, 1915—Motion Denied.
- Conch *v.* Davis—Homestead—February 12, 1916—Affirmed.
- Courtemanche *v.* Northern Pacific Ry. Co.—Homestead—March 16, 1915—Affirmed.
- Courtemanche *v.* Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Cowan, Florence M.—Desert Land—February 26, 1916—Affirmed.
- Cowan, William—Desert Land—February 26, 1916—Affirmed.
- Cowden, Bettie N.—Desert Land—August 23, 1915—Reversed.
- Cowden, John H.—Desert Land—August 23, 1915—Reversed.
- Cox, Edward M.—Homestead—September 27, 1915—Affirmed.
- Cox, Harvey M.—Homestead—July 31, 1915—Affirmed.
- Cox *v.* Meyer—Homestead—November 23, 1915—Motion Denied.
- Crabtree, Edmund L.—Timber and Stone—November 17, 1915—Reversed.
- Craig *v.* Cox—Desert Land—February 25, 1916—Affirmed.
- Crain *et al.* *v.* Blodgett—Soldiers' Additional—March 18, 1915—Letter to Geological Survey.
- Crain *et al.* *v.* Blodgett, assignee—Soldiers' Additional—January 13, 1916—Motion Denied.
- Crawford, George W.—Report—February 5, 1916—Petition Denied.
- Crawford *et al.* *v.* Riddle—Desert Land—October 27, 1915—Affirmed.
- Crayton *v.* Dixon—Homestead—April 10, 1915—Motion Denied.
- Creekmore, Henry—Homestead—October 18, 1915—Remanded.
- Crisemon, Louise M.—Homestead—December 13, 1915—Affirmed.
- Critchlow, James R.—Desert Land—February 5, 1916—Remanded.
- Croghan, Herbert A.—Homestead—October 23, 1915—Affirmed.
- Crosby, George H. (2 cases)—Mineral—April 26, 1915—Reversed.
- Crowder *v.* Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Crowley, Arthur L.—Homestead—June 23, 1915—Affirmed.
- Crowley, Arthur L.—Homestead—August 26, 1915—Motion Denied.
- Crowley, Robert E.—Desert Land—November 3, 1915—Petition Denied.
- Crowley *v.* Smith—Desert Land—May 18, 1915—Motion Denied.
- Crowley *v.* Young—Homestead—January 29, 1916—Affirmed.
- Crump, James—Report—February 29, 1916—Affirmed.
- Cuff, Charles, Field, L. H. transferee—Homestead—March 6, 1915—Motion Remanded.
- Culbertson, John T. M.—Report—January 3, 1916—Affirmed.
- Culp, Alonzo—Homestead—January 22, 1916—Reversed.
- Culp *v.* Beale—Desert Land—August 11, 1915—Modified and Remanded.
- Culp *v.* Beale—Desert Land—November 3, 1915—Motion Modified.
- Culver, Isaac, Rasmus Ueland & Elvina Hayes—Indian Allotment—April 17, 1915—Reversed.
- Cumberland Mining & Smelting Co.—Report—April 26, 1915—Motion Denied.
- Cummings, B. A., assignee—Soldiers' Additional—April 29, 1915—Affirmed.
- Cunningham, Alice—Homestead—April 27, 1915—Affirmed.

- Curran *v.* Baqué—Desert Land—August 3, 1915—Remanded.
- Curran *v.* Baqué—Desert Land—November 23, 1915—Motion Denied.
- Curry, Purdy—Homestead—June 19, 1915—Reversed.
- Curtis *v.* Bruce—Indian Allotment—January 31, 1916—Affirmed.
- Curtis *v.* Sexsmith—Homestead—September 22, 1915—Affirmed.
- Curtis *v.* State of Idaho—Homestead—March 16, 1915—Affirmed.
- Cusker, Edna—Desert Land—March 31, 1915—Affirmed.
- Custer, Melissa—Timber and Stone—January 3, 1916—Affirmed.
- Czysch, Paul S.—Homestead—March 9, 1915—Affirmed.
- Dahl, Charles H.—Homestead—March 23, 1915—Remanded.
- Dakan, Ira E.—Homestead—July 22, 1915—Remanded.
- Dale, Mary J., Heirs of—Homestead—August 4, 1915—Affirmed.
- Dallas *v.* Northern Pacific Ry. Co.—Homestead—March 9, 1915—Affirmed.
- Daly, John F.—Homestead—February 4, 1916—Affirmed.
- Danhauer, Lydia E.—Timber and Stone—February 29, 1916—Affirmed.
- Daniels *v.* Stubbs—Homestead—February 26, 1916—Affirmed.
- Darnell, Elmer E.—Homestead—January 3, 1916—Affirmed.
- Dartt, John L., assignee of Eva Burling—Soldiers' Additional—August 13, 1915—Remanded.
- Dauwalder, Frederick E.—Homestead—January 22, 1916—Reversed.
- Davenport, Donnell, assignee—Desert Land—October 22, 1915—Petition Granted.
- Davies, Mardwyn W.—October 15, 1915—Letter to Reclamation Service.
- Davies, Mardwyn W.—Homestead—January 26, 1916—Remanded.
- Davis, Alexzina—Allotment—March 27, 1915—Affirmed.
- Davis, Alexzina (for O. J.)—Allotment—March 27, 1915—Affirmed.
- Davis, Alexzina (for S. D.)—Allotment—March 27, 1915—Affirmed.
- Davis, Jesse—Homestead—August 27, 1915—Modified.
- Davis, John—Homestead—September 3, 1915—Remanded.
- Davis, John C.—Homestead—March 17, 1915—Affirmed.
- Davis, John M.—Timber and Stone—April 12, 1915—Reversed.
- Davis, Russell B.—Homestead—April 6, 1915—Affirmed.
- Davis, Russell B.—Homestead—June 7, 1915—Motion Remanded.
- Davis, Thomas W.—Homestead—March 23, 1915—Remanded.
- Davis, Walter—Homestead—February 19, 1916—Affirmed.
- Davis *v.* Chevalier—Homestead—October 29, 1915—Affirmed.
- Davis *v.* Fate—Desert Land—January 24, 1916—Affirmed.
- Davis *v.* Northern Pacific Ry. Co.—Homestead—March 17, 1915—Affirmed.
- Davis *v.* Palmer *et al.*—Homestead—March 27, 1915—Affirmed.
- Davison *v.* Central Pacific Ry. Co.—Selection—March 31, 1915—Affirmed.
- Dawe, Charles B.—Homestead—June 30, 1915—Modified.
- Dawkins *v.* Hedin—Homestead—May 21, 1915—Certiorari Allowed.
- Deal, J. R.; *et al.*—Right of Way—July 23, 1915—Remanded.
- Deal, J. R., *et al.*—Reservoir—January 3, 1916—Instructions.
- Dean, William, *et al.*—Homestead—February 29, 1916—Affirmed.
- Dearborn *v.* Messinger—Desert Land—June 19, 1915—Certiorari Denied.
- Dearborn *v.* Messinger—Desert Land—July 28, 1915—Petition Denied.
- de Baca, A. G.—Isolated Tract—September 27, 1915—Affirmed.
- Decoto, Louis A.—Desert Land—July 30, 1915—Affirmed.
- Decoto, Raymond A.—Desert Land—December 13, 1915—Affirmed.
- Deering, James, assignee—Soldiers' Additional—April 10, 1915—Affirmed.
- Deering, James—Soldiers' Additional—July 23, 1915—Affirmed.
- Deering, James—Soldiers' Additional—July 23, 1915—Motion Remanded.
- Deering, James, assignee—Soldiers' Additional—October 29, 1915—Motion Denied.
- Delany *v.* Northern Pacific Ry. Co.—Homestead—November 18, 1915—Affirmed.
- Delany *v.* Northern Pacific Ry. Co.—Homestead—January 29, 1916—Motion Denied.
- Delany *v.* Northern Pacific Ry. Co.—Homestead—February 16, 1916—Petition Denied.
- DeMaris, Nellie F., executrix—Homestead—February 5, 1916—Affirmed.
- DeMuth, Joseph A.—Desert Land—January 26, 1916—Reversed.
- Dehny, Anna K.—Homestead—August 11, 1915—Vacated and Remanded.
- Denny, Mary, assignee—Desert Land—January 15, 1916—Modified.
- Dent, Fannie F.—Homestead—November 23, 1915—Reversed.

- Detwiler *v.* Rowland—Homestead—February 26, 1916—Affirmed.
- DeVane, D. L., *et al.*—Homestead—December 13, 1915—Letter to Reclamation Service.
- Dever *v.* Labrie—Desert Land—September 18, 1915—Remanded.
- Devers, Jessie F.—Desert Land—March 3, 1915—Reversed.
- Dick, Samuel F.—Desert Land—March 17, 1915—Affirmed.
- Dickerson *v.* Derry—Homestead—April 23, 1915—Affirmed.
- Dickerson, Philip J.—Report—June 5, 1915—Affirmed.
- Dickson, Jennie C.—Homestead—August 23, 1915—Affirmed.
- Dieckman, Charles F.—Homestead—March 27, 1915—Modified.
- Dierenfeld *v.* Peterson—Homestead—August 27, 1915—Reversed.
- Dierenfeld *v.* Peterson—Homestead—December 13, 1915—Motion Denied.
- Dietrick, Charles—Homestead—January 31, 1916—Affirmed.
- Dillon, Mabel H.—Report—February 2, 1916—Affirmed.
- Dingwell, William—Report—February 16, 1916—Affirmed.
- Dipp, Charles, *et al.*—Timber and Stone—March 6, 1915—Affirmed.
- Dipp, Charles—Timber and Stone—May 26, 1915—Motion Denied.
- Dirkes, Joseph—Homestead—January 22, 1916—Reversed.
- Ditmer *v.* Sterrett—Homestead—December 13, 1915—Affirmed.
- Dixon, Mitchell B.—May 14, 1915—Attorney Disbarred.
- Dixson, L. A., assignee—Desert Land—August 4, 1915—Remanded.
- Dobson, Delphene—Homestead—March 23, 1915—Remanded.
- Doerner *v.* Lee—Homestead—January 3, 1916—Affirmed.
- Doggett, Charles D.—Homestead—June 4, 1915—Affirmed.
- Doggett, Joseph L.—Report—February 29, 1916—Affirmed.
- Dokken, Bernard—Homestead—January 20, 1916—Reversed.
- Dokken, Herman H.—Homestead—January 22, 1916—Reversed.
- Donyes, Charles F.—Mineral—May 15, 1915—Affirmed.
- Dorr *v.* Drake—Homestead—January 26, 1916—Affirmed.
- Doss, Wilbur C.—Homestead—February 12, 1916—Affirmed.
- Doudy, Joseph—Homestead—January 26, 1916—Vacated.
- Douglas, Ethel L.—Homestead—July 27, 1915—Affirmed.
- Douglas, Ethel L.—Timber and Stone—October 4, 1915—Motion Denied.
- Douglas, J. S.—Scrip—August 11, 1915—Affirmed.
- Douglass *v.* Fulleton—Homestead—April 29, 1915—Remanded.
- Douglass *v.* Fulleton—Homestead—November 5, 1915—Affirmed.
- Dove, John C.—Homestead—December 1, 1915—Affirmed.
- Dowd, John, Walker, M. L., transferee—Homestead—March 6, 1915—Motion Remanded.
- Downard, John R.—Homestead—March 23, 1915—Remanded.
- Downey *v.* Davis—Homestead—February 7, 1916—Affirmed.
- Downing, Joshua A.—Homestead—August 18, 1915—Affirmed.
- Downs, Mary—Desert Land—April 27, 1915—Remanded.
- Drake *v.* Hunt—Homestead—September 14, 1915—Affirmed.
- Drake *v.* Montgomery—Homestead—January 26, 1916—Affirmed.
- Draucker *v.* Young—Homestead—December 24, 1915—Affirmed.
- Draucker *v.* Young—Homestead—January 28, 1916—Motion Denied.
- Draucker *v.* Young—Homestead—February 19, 1916—Petition Denied.
- Drever, Mary A.—Homestead—May 3, 1915—Reversed.
- Driscoll, Katherine—Homestead—January 13, 1916—Affirmed.
- Driscoll *v.* Cracroft—Homestead—August 26, 1915—Affirmed.
- Dubois, Alexander D.—Homestead—January 20, 1916—Reversed.
- Dudley, Frank W.—Homestead—April 23, 1915—Affirmed.
- Duff, Lida B.—Homestead—November 3, 1915—Affirmed.
- Duggan, Walter W.—Homestead—April 27, 1915—Affirmed.
- Duke, James—Homestead—April 12, 1915—Letter to General Land Office.
- Dunbar, Katherine L.—Homestead—September 16, 1915—Modified.
- Dunbar, Katherine L.—Homestead—July 8, 1915—Remanded.
- Duncan, Troy—Homestead—July 31, 1915—Remanded.
- Duncan *v.* Creighton—Homestead—April 21, 1915—Remanded.
- Duncan *v.* Northern Pacific Ry. Co.—Homestead—May 27, 1915—Affirmed.
- Dungan, William E.—Homestead—April 27, 1915—Affirmed.
- Dunham, Henry E.—Indian Allotment—June 12, 1915—Affirmed.
- Dunlap, Willard E.—Homestead—September 3, 1915—Petition Denied.
- Dunn, Thomas T.—Homestead—March 17, 1915—Letter to Agricultural Department.
- Dunn, Thomas T.—Homestead—April 6, 1915—Motion Allowed.

- Dunn v. Nilson—Homestead—March 30, 1915—Petition Denied.
- Dunton v. Lont—Desert Land—October 23, 1915—Affirmed.
- Durrand, James A.—Timber and Stone—April 27, 1915—Affirmed.
- Durrand, John H.—Homestead—April 27, 1915—Affirmed.
- Dwyer, Mary C.—Homestead—March 27, 1915—Affirmed.
- Dwyer, William T.—Homestead—April 29, 1915—Affirmed.
- Eades, Upson W.—Homestead—June 5, 1915—Affirmed.
- Earl, Nellie M.—Desert Land—June 8, 1915—Remanded.
- Earl, Ovaatt A.—Desert Land—July 8, 1915—Remanded.
- Earl et al. v. Henderson—Soldiers' Additional—April 27, 1915—Motion Denied.
- Earley, Herbert—Homestead—July 23, 1915—Affirmed.
- Early, Lewis B.—Desert Land—May 22, 1915—Petition Denied.
- Eastman, Jay W.—Homestead—November 1, 1915—Affirmed.
- Eastman, Jay W.—Homestead—December 14, 1915—Motion Denied.
- Easton, F. B., assignee—Soldiers' Additional—October 4, 1915—Affirmed.
- Eccles, Robert, Northern Pacific Ry. Co. v. C. J. Reilly—Selection—April 12, 1915—Reversed.
- Edgar, John R.—Homestead—April 14, 1915—Reversed.
- Edge, Albert T.—Homestead—December 17, 1915—Affirmed.
- Edwards, John—Desert Land—November 3, 1915—Affirmed.
- Edwards, Louise—Desert Land—August 2, 1915—Remanded.
- Edwards, Richard M., assignee (2 cases)—Soldiers' Additional—February 26, 1916—Affirmed.
- Edwards, Thomas, Heirs of—Timber and Stone—March 8, 1915—Motion Denied.
- Edwards v. Beck—Homestead—September 22, 1915—Affirmed.
- Edwards v. Bodkin, assignee—Soldiers' Additional—March 22, 1915—Certiorari Granted.
- Edwards v. Bodkin—Homestead—April 6, 1915—Petition Denied.
- Edwards v. Bodkin—Soldiers' Additional—June 23, 1915—Approved.
- Edwards v. Heirs of Smith—Desert Land—August 2, 1915—Affirmed.
- Edwards v. Southern Pacific R. R. Co.—Desert Land—March 8, 1915—Motion Denied.
- Edwards v. Southern Pacific R. R. Co.—Desert Land—May 15, 1915—Motion Denied.
- Ehr v. Phillips—Desert Land—February 4, 1916—Affirmed.
- Eikhoff, George—Homestead—March 23, 1915—Remanded.
- Eliason, Maria, Heirs of, et al.—Homestead—January 31, 1916—Affirmed.
- Elliott, Annie E.—Homestead—September 27, 1915—Vacated and Remanded.
- Elliott v. de Ortega—Homestead—May 6, 1915—Certiorari Denied.
- Elliott v. de Ortega—Homestead—July 28, 1915—Petition Denied.
- Ellis, H. C.—Timber and Stone—January 24, 1916—Affirmed.
- Elmaker, Harlan D.—Timber and Stone—March 31, 1915—Affirmed.
- Elmaker, Harlan D.—Timber and Stone—August 17, 1915—Motion Denied.
- Ellsworth, James G. B.—Homestead—August 3, 1915—Affirmed.
- Ely, Liela F.—Desert Land—April 14, 1915—Remanded.
- Engell, Herman E.—May 15, 1915—Reversed.
- Engen, Andrew, Bohart, Field, transferee—Homestead—March 6, 1915—Motion Remanded.
- Engstrand v. Northern Pacific Ry. Co.—Homestead—March 9, 1915—Affirmed.
- Engstrom, Abel—Homestead—April 27, 1915—Affirmed.
- Ennis v. Northern Pacific Ry. Co.—Selection—May 12, 1915—Affirmed.
- Erickson, Henry—Report—April 10, 1915—Affirmed.
- Erickson, Henry—Report—July 22, 1915—Affirmed.
- Erickson v. Keusch—Homestead—October 27, 1915—Affirmed.
- Erickson v. Prew—Homestead—March 6, 1915—Motion Denied.
- Ericson v. Northern Pacific Ry. Co.—Homestead—December 18, 1915—Affirmed.
- Erikson v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Erikson v. Northern Pacific Ry. Co.—Homestead—March 27, 1915—Affirmed.
- Eschback, A. P., Administrator of I. Hays—Report—February 29, 1916—Affirmed.
- Evans, Ernest C.—Homestead—October 21, 1915—Affirmed.
- Evans, James H.—Desert Land—March 27, 1915—Affirmed.
- Evans v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Evans v. Powell—Homestead—June 30, 1915—Reversed.
- Evans v. Powell—Homestead—October 30, 1915—Dismissed.

- Everson, Heirs of, *v.* Northern Pacific Ry. Co.—Homestead—January 29, 1916—Motion Denied.
- Everett, John E., *et al.*—Homestead—March 31, 1915—Petition Denied.
- Everts *v.* Houtz—Homestead—June 28, 1915—Petition Denied.
- Ewing, Harry B.—Desert Land—January 29, 1916—Affirmed.
- Ewing, John H.—Homestead—June 12, 1915—Remanded.
- Fahey *et al.* *v.* Central Pacific Ry. Co.—Selection—March 27, 1915—Affirmed.
- Faick *v.* State of Montana—Homestead—April 26, 1915—Affirmed.
- Fairfield, John H.—Report—April 14, 1915—Affirmed.
- Fall, John E.—Homestead—September 22, 1915—Affirmed.
- Fall, John E.—Homestead—January 20, 1916—Motion Denied.
- Falvey, Bessie G., transferee—Selection—April 6, 1915—Affirmed.
- Farris *v.* Moores—Desert Land—May 11, 1915—Reversed.
- Farris *v.* Moores—Desert Land—August 5, 1915—Motion Allowed.
- Farris *v.* Moores—Desert Land—February 26, 1916—Motion Allowed.
- Faulkinbury, Virgie—Homestead—November 5, 1915—Affirmed.
- Fauquier *et al.* *v.* Blayne *et al.*—Reservoir—September 8, 1915—Reversed.
- Faure, Charles M.—Desert Land—April 27, 1915—Affirmed.
- Faust, William F., assignee—Soldiers' Additional—March 17, 1915—Motion Denied.
- Fedler, Catherine D.—Report—February 29, 1916—Affirmed.
- Fellers *v.* Pulvermaker—Homestead—November 19, 1915—Affirmed.
- Felts, David A.—Homestead—March 27, 1915—Affirmed.
- Fenter *v.* Miller—Homestead—April 24, 1915—Affirmed.
- Ferguson, Arthur J.—Report—June 19, 1915—Affirmed.
- Ferguson, Rachel E.—Homestead—January 5, 1916—Affirmed.
- Ferris, Edward H.—Homestead—January 22, 1916—Reversed.
- Fessenden *v.* Southern Pacific Ry. Co.—Homestead—April 21, 1915—Motion Denied.
- Fey, Ambrose J.—Homestead—January 19, 1916—Reversed.
- Fields, Nellie—Homestead—October 21, 1915—Affirmed.
- Finch *v.* Wilcox—Homestead—August 18, 1915—Affirmed.
- Fink, Benjamin L.—Homestead—June 17, 1915—Affirmed.
- Finley, John—Homestead—December 15, 1915—Affirmed.
- Finnerty, John R.—Homestead—February 18, 1916—Affirmed.
- Fiscus, Bert C.—Homestead—January 20, 1916—Reversed.
- Fisher, John H.—Mineral—August 6, 1916—Reversed.
- Fisher, Joseph C.—Homestead—March 23, 1915—Remanded.
- Flasher, Florence—Homestead—January 22, 1916—Reversed.
- Flatness Reservoir—Reservoir—February 26, 1916—Remanded.
- Fleiselmann *v.* Saar—Homestead—August 5, 1915—Affirmed.
- Fleming *v.* Zemke—Homestead—May 29, 1915—Petition Denied.
- Fleuti *v.* Central Pacific Ry. Co.—Homestead—January 29, 1916—Affirmed.
- Flint, Arthur J.—Homestead—May 6, 1915—Reversed.
- Flood *et al.* *v.* Heirs of Aubertus—Homestead—June 30, 1915—Affirmed.
- Florida, State of—Swamp—April 22, 1915—Instructions.
- Florida, State of—Selection—August 4, 1915—Reversed.
- Florida, State of, *v.* L. S. Cody—Homestead—April 17, 1915—Reversed.
- Florida, State of, *v.* R. W. Cody—Homestead—April 17, 1915—Reversed.
- Florida, State of, *v.* Cody *et al.*—Homestead—July 22, 1915—Remanded.
- Florida, State of, *v.* Hensen—Homestead—April 17, 1915—Reversed.
- Florida, State of, *v.* Pickren—Homestead—April 17, 1915—Reversed.
- Fonten, Alfred J.—Homestead—November 23, 1915—Vacated.
- Ford, Bert R.—Homestead—August 4, 1915—Affirmed.
- Forge, Elmer—Desert Land—October 4, 1915—Affirmed.
- Forker *v.* Hartshorn *et al.*—Desert Land—August 11, 1915—Reversed.
- Forker *et al.* *v.* Sargent—Desert Land—January 29, 1916—Motion Denied.
- Forrest *v.* Jones—Timber and Stone—July 2, 1915—Affirmed.
- Forrest *v.* Jones—Timber and Stone—September 8, 1915—Motion Denied.
- Forster *v.* Fleck—Homestead—February 29, 1916—Remanded.
- Fossum *v.* Brown—Desert Land—April 10, 1915—Affirmed.
- Foster *v.* Wilson—Desert Land—July 23, 1915—Petition Denied.
- Fourt, E. J., assignee—Soldiers' Additional—July 27, 1915—Modified.

- Fox, George B., *et al.*—Homestead—July 16, 1915—Petition Granted.
- Fox, L. V., *et al.*—Homestead—June 26, 1915—Petition Granted.
- Foye *v.* Fuhrman *et al.*—Homestead—May 4, 1915—Certiorari Denied.
- Fraker, Eliza F.—Desert Land—October 26, 1915—Affirmed.
- Fraker, Eliza F.—Report—December 1, 1915—Motion Denied.
- Francis *v.* Clack—Desert Land—January 19, 1916—Affirmed.
- Francisco, Onecimo, Navajo Lumber & Supply Co.—Timber and Stone—May 15, 1915—Denied.
- Francisco, Andrew, Navajo Lumber & Supply Co.—Timber and Stone—May 15, 1915—Denied.
- Fraser *v.* Chaves—Homestead—April 21, 1915—Motion Denied.
- Frederick, John—Homestead—July 23, 1915—Reversed.
- Fredrich, R. H., Atwood, E. A., transferee—Homestead—March 6, 1915—Motion Remanded.
- Freeland, Maggie E.—Desert Land—October 23, 1915—Reversed.
- Freeman *v.* Freeman—Homestead—November 19, 1915—Affirmed.
- Friedek, Theresa, Moses, W. E., transferee—Homestead—March 6, 1915—Motion Remanded.
- Friedman, Henry—Report—February 29, 1916—Affirmed.
- Fried, William M.—Homestead—January 31, 1916—Affirmed.
- Friesen, Isaac I.—Homestead—June 12, 1915—Letter to Reclamation Service.
- Friesen, Isaac I.—Homestead—September 3, 1915—Affirmed.
- Fugate, Paul A.—Homestead—January 26, 1916—Affirmed.
- Fugate, Paul A.—Homestead—February 29, 1916—Motion Denied.
- Fuller, C. W., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Fuller, E. C., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Fuller, Henry S.—Homestead—December 7, 1915—Affirmed.
- Fulton, Ralph T.—Homestead—March 27, 1915—Reversed.
- Gaasch, Frank—Homestead—March 17, 1915—Motion Denied.
- Gable, Frank P.—Homestead—January 31, 1916—Affirmed.
- Gaither, Zella H.—Homestead—June 19, 1915—Affirmed.
- Galbraith, J. E., *et al.*—Mineral—April 20, 1915—Affirmed.
- Galbraith, J. E., *et al.*—Mineral—July 8, 1915—Motion Denied.
- Galbraith, J. E., *et al.*—Mineral—September 27, 1915—Petition Denied.
- Gambee, Isaac C.—Desert Land—March 17, 1915—Modified.
- Gammill, Oscar P.—Homestead—November 10, 1915—Affirmed.
- Gannon *v.* State of Minnesota—Swamp—June 23, 1915—Affirmed.
- Garcia, Juan, assignee—Soldiers' Additional—October 7, 1915—Remanded.
- Gard, Jesse S.—Homestead—April 14, 1915—Remanded.
- Gardipee, Julian—Homestead—January 31, 1916—Affirmed.
- Gardner, Emma—Homestead—November 11, 1915—Reversed.
- Gardner, I. P., assignee—Soldiers' Additional—October 25, 1915—Remanded.
- Gardner *v.* Allen—Homestead—June 4, 1915—Affirmed.
- Garino *v.* Barrett—Desert Land—March 31, 1915—Motion Denied.
- Garmany, James F.—Homestead—December 13, 1915—Reversed.
- Garner, Naomie, Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Garvey *v.* Pippenger—Homestead—July 26, 1915—Affirmed.
- Garwick, Noah—Homestead—March 22, 1915—Remanded.
- Garwick, Noah—Homestead—January 24, 1916—Modified.
- Gaskill *v.* Needham—Desert Land—July 26, 1915—Reversed.
- Gaskill *v.* Needham—Desert Land—October 15, 1915—Motion Denied.
- Gay, Sam P.—Homestead—January 31, 1916—Affirmed.
- Gay, Thomas H.—Water Right—May 27, 1915—Letter to Reclamation Service.
- Gay, Thomas H.—Water Right—June 19, 1915—Affirmed.
- Gebhart, David W.—Soldiers' Additional—October 29, 1915—Affirmed.
- George, Earl C.—Homestead—January 22, 1916—Reversed.
- George, Hortense J.—Homestead—October 15, 1915—Affirmed.
- George, T. H.—Coal—March 17, 1915—Affirmed.
- Gemberling, E. L., *et al.*—Homestead—May 27, 1915—Motion Denied.
- Gerdon *v.* Bowdish—Homestead—October 22, 1915—Affirmed.
- Gerndt, Fred, Whitaker, D. R., transferee—Homestead—March 6, 1915—Motion Remanded.
- Geyer *v.* Hurd—Isolated Tract—October 23, 1915—Affirmed.
- Geyer *v.* Hurd—Isolated Tract—December 13, 1915—Motion Denied.

- Giaque, Eulalie—Report—May 14, 1915—Vacated.
- Gibbins, Oscar—Homestead—April 26, 1915—Modified.
- Gibbs, Alexander—Homestead—March 23, 1915—Remanded.
- Gibbs, Nettie C.—Homestead—April 2, 1915—Remanded.
- Gibson, Charles A.—Desert Land—April 14, 1915—Affirmed.
- Gibson v. Pierce—Desert Land—February 10, 1916—Reversed.
- Gidmark, Emil—Homestead—April 29, 1915—Affirmed.
- Giersdorf, Guy—Homestead—December 24, 1915—Affirmed.
- Giersdorf, Joseph R.—Homestead—December 22, 1915—Affirmed.
- Girlich v. Davis—Homestead—January 29, 1916—Motion Sustained.
- Gilbert, Gertrude K.—Homestead—August 9, 1915—Affirmed.
- Gilbertson, Carl G.—Homestead—August 18, 1915—Motion Denied.
- Gilboe, Anne K.—Desert Land—September 27, 1915—Affirmed.
- Gilbride, Mark T.—Homestead—February 16, 1916—Affirmed.
- Gilbride, Michael, assignee—Desert Land—February 7, 1916—Affirmed.
- Gildrey, Richard E.—Coal—July 16, 1915—Affirmed.
- Gill, George P.—Homestead—April 21, 1915—Motion Denied.
- Gill, George P.—Homestead—October 7, 1915—Petition Denied.
- Gillespie, Gertrude—Homestead—May 14, 1915—Motion Denied.
- Gillette v. Rise—Homestead—January 26, 1916—Affirmed.
- Gilliland, George, B.—Homestead—July 10, 1915—Letter to Geological Survey.
- Gilliland, George H.—Homestead—August 30, 1915—Affirmed.
- Gillmeister v. Brokke—Desert Land—November 3, 1915—Affirmed.
- Gillmeister v. Brokke—Desert Land—January 11, 1916—Motion Denied.
- Gilman, Rae C.—Homestead—August 9, 1915—Hearing Ordered.
- Gilmore, C. Leo—Homestead—March 23, 1915—Reversed.
- Gilpatrick, Oren—Homestead—December 17, 1915—Affirmed.
- Girtanner, Alice M.—Desert Land—January 26, 1916—Modified.
- Gist, Marmaduke, assignee—Soldiers' Additional—June 28, 1915—Affirmed.
- Gist, Marmaduke, assignee—Soldiers' Additional—August 18, 1915—Motion Denied.
- Gist, Marmaduke, assignee—Soldiers' Additional—November 23, 1915—Affirmed.
- Glass, Fred (for Minor Children)—Indian Allotment—February 19, 1916—Affirmed.
- Glazner, Robert F.—Homestead—October 25, 1915—Affirmed.
- Gleason v. Beach—Homestead—October 25, 1915—Affirmed.
- Glick v. Wiberg—Homestead—May 17, 1915—Motion Allowed.
- Glindemann, Gus, assignee—Desert Land—September 27, 1915—Remanded.
- Glingam v. Soule—Homestead—August 21, 1915—Affirmed.
- Goforth, Eva G.—Homestead—December 31, 1915—Affirmed.
- Goldberg, Mike—Homestead—April 27, 1915—Affirmed.
- Gooch, Thomas R.—Homestead—December 18, 1915—Affirmed.
- Good, Charles D.—Homestead—June 1, 1915—Letter to Geological Survey.
- Good, Charles D.—Homestead—November 5, 1915—Reversed.
- Gooding, Edward G.—Mineral—September 22, 1915—Instructions.
- Gordon, John N.—March 27, 1915—Letter to Geological Survey & Reclamation Service.
- Gordon, John N.—Homestead—July 10, 1915—Modified.
- Gordon v. Upson—Homestead—January 29, 1916—Affirmed.
- Gore, Scott—Homestead—July 8, 1915—Remanded.
- Gorsuch, Anna Belle—Desert Land—July 31, 1915—Remanded.
- Gorsuch, William T.—Desert Land—July 31, 1915—Remanded.
- Goss v. Finkbeiner—Desert Land—January 26, 1916—Reversed.
- Gosselin, Joseph, Hulett, H. P., transferee—Homestead—March 6, 1915—Motion Remanded.
- Gossman v. Andrich—Homestead—December 31, 1915—Affirmed.
- Gossman v. Andrich—Homestead—February 4, 1916—Motion Denied.
- Gould, Agnes, assignee—Coal—October 21, 1915—Affirmed.
- Gould v. Shawk—Desert Land—June 17, 1915—Affirmed.
- Gowey, Gilbert E.—Timber Land—January 31, 1916—Vacated.
- Grabe, William F.—Report—June 29, 1915—Reversed.
- Graham, Grace A.—Report—February 2, 1916—Affirmed.
- Graham v. English—Homestead—July 29, 1915—Affirmed.
- Grandell, Ernst—Homestead—March 9, 1915—Affirmed.
- Grant, Duncan P.—Desert Land—September 8, 1915—Remanded.

- Grant, Edward R.—Isolated Tract—September 3, 1915—Affirmed.
- Grant v. Stanley *et al.*—Homestead—May 17, 1915—Motion Allowed.
- Grant v. Wheaton—Homestead—November 1, 1915—Affirmed.
- Grant v. Wheaton—Homestead—December 21, 1915—Motion Denied.
- Grass Creek Oil & Gas Co.—Mineral—February 29, 1916—Remanded.
- Graver v. Northern Pacific Ry. Co.—Selection—May 12, 1915—Affirmed.
- Graves, Howard E.—Homestead—January 22, 1916—Reversed.
- Gray v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Greeley Hydro-Electric & Irrigation Co.—Reservoir—March 25, 1915—Affirmed.
- Green, John W.—Homestead—March 23, 1915—Remanded.
- Green, John W.—Homestead—October 26, 1915—Remanded.
- Green, Ludwig, Whitaker, D. R., transferee—Homestead—March 6, 1915—Motion Remanded.
- Green v. Heesen—Homestead—April 29, 1915—Affirmed.
- Greer v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Gregerson, Hans—Desert Land—January 28, 1916—Affirmed.
- Gregoire, Lillian B.—Homestead—January 5, 1916—Reversed.
- Grieser v. Heirs of Samuel Lamson—Homestead—April 23, 1915—Affirmed.
- Grieve, Robert, transferee—Homestead—December 18, 1915—Affirmed.
- Griffith, Della—Homestead—July 27, 1915—Reversed.
- Grigg, Parley M., Jr.—Homestead—February 25, 1916—Affirmed.
- Gross, Gustav—Desert Land—February 29, 1916—Affirmed.
- Groth v. Gray—Homestead—May 11, 1915—Reversed.
- Groth v. Gray—Homestead—August 6, 1915—Motion Allowed.
- Grouch, Albert E.—Homestead—April 29, 1915—Affirmed.
- Groundwater v. Northern Pacific Ry. Co.—Homestead—November 18, 1915—Affirmed.
- Grover v. Hinds—Homestead—June 11, 1915—Affirmed.
- Grover v. Hinds—Homestead—August 13, 1915—Motion Denied.
- Gruby, Paul R.—Homestead—June 25, 1915—Affirmed.
- Guder, Paul A.—Homestead—October 25, 1915—Affirmed.
- Gunn, R. W.—Homestead—August 27, 1915—Modified.
- Gunderson, John A.—Homestead—November 24, 1915—Affirmed.
- Gunderson, John A.—Homestead—February 26, 1916—Motion Denied.
- Gunn, Nelson—Report—January 23, 1916—Motion Denied.
- Gurley, S. A. D., Heirs of—Report—April 29, 1915—Affirmed.
- Gutierrs, Roberto—Homestead—June 5, 1915—Remanded.
- Guyette, Joseph H.—Homestead—May 15, 1915—Affirmed.
- Haas, Alan O.—Timber and Stone—April 27, 1915—Affirmed.
- Hacker, Louis C.—Homestead—June 25, 1915—Reversed.
- Hadley, Bert O.—Homestead—June 30, 1915—Letter to Reclamation Service.
- Hadley, Bert O.—Homestead—August 14, 1915—Affirmed.
- Hadsall v. Southern Pacific Ry. Co.—Homestead—April 21, 1915—Motion Denied.
- Hagelberg, Alfred—Homestead—September 4, 1915—Petition Denied.
- Hagge, Ella A.—Desert Land—December 18, 1915—Affirmed.
- Hagge, Ferdinand J.—Report—December 18, 1915—Affirmed.
- Haggerty *et al.* v. Engstrom—Mineral—May 15, 1915—Affirmed.
- Haglund v. Northern Pacific Ry. Co.—Timber and Stone—May 3, 1915—Motion Denied.
- Haight, E. C., administrator—Report—September 16, 1915—Petition Denied.
- Haines v. Fugate—Homestead—January 20, 1916—Affirmed.
- Halcro, Archie—Homestead—January 20, 1916—Reversed.
- Halcro, Thomas—Homestead—January 20, 1916—Reversed.
- Haley, John—Homestead—May 14, 1915—Reversed.
- Hall, Frank—Homestead—July 2, 1915—Affirmed.
- Hall, G. W., *et al.*—Reservoir—July 20, 1915—Remanded.
- Hall, Lyman B.—Preemption—October 23, 1915—Petition Denied.
- Hall, Maude—Homestead—February 29, 1916—Affirmed.
- Hall, Walter S.—Homestead—June 28, 1915—Affirmed.
- Halliday v. Love—Homestead—January 29, 1916—Affirmed.
- Halsey, Stella D.—Desert Land—July 23, 1915—Affirmed.
- Halverson, Hans J.—Desert Land—July 27, 1915—Affirmed.
- Halvorson v. Northern Pacific Ry. Co.—Homestead—March 17, 1915—Affirmed.

- Halvorson *v.* Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Hamilton Dam & Reservoir—April 29, 1915—Affirmed.
- Hamilton Dam & Reservoir—October 26, 1915—Motion Allowed.
- Hamilton, Gustaf A. N.—Desert Land—April 30, 1915—Modified.
- Hamilton, Porter L.—Homestead—August 5, 1915—Remanded.
- Hammond, Charles S.—Desert Land—August 13, 1915—Motion Denied.
- Hammond, Rollin—Homestead—February 26, 1916—Affirmed.
- Hammond *v.* Bruce—Indian Allotment—January 31, 1916—Affirmed.
- Hampton, Alfred H., assignee—Soldiers' Additional—April 30, 1915—Affirmed.
- Hampton, Henry C.—Desert Land—October 7, 1915—Affirmed.
- Hampton, Turley A.—Report—March 27, 1915—Affirmed.
- Hampton *v.* Mook—Homestead—June 17, 1915—Affirmed.
- Handel, F. W., *et al.*—Coal—June 23, 1915—Instructions.
- Handel, Fred W., *et al.*—Coal—November 13, 1915—Motion Denied.
- Hanford *v.* Northern Pacific Ry. Co.—Homestead—September 24, 1915—Affirmed.
- Hanford *v.* Northern Pacific Ry. Co.—Homestead—November 23, 1915—Motion Denied.
- Hangard, Hannah, Miller, O. G., transferee—Homestead—March 6, 1915—Motion Remanded.
- Hankins *v.* Pfeifle—Homestead—November 11, 1915—Affirmed.
- Hanley, Anna E.—Homestead—September 22, 1915—Affirmed.
- Hannum, James O.—Homestead—February 25, 1916—Affirmed.
- Hansen, C. E. *et al.*—Homestead—March 8, 1915—Affirmed.
- Hanson, Carl K.—Homestead—February 26, 1916—Remanded.
- Hanson, Charles S.—April 21, 1915—Letter to Geological Survey.
- Hanson, Charles S.—June 23, 1915—Letter to Geological Survey.
- Hanson, Charles S.—Homestead—November 5, 1915—Remanded.
- Hanson, Robert, *et al.*—Homestead—May 17, 1915—Affirmed.
- Harbaugh, Bert—Homestead—January 20, 1916—Reversed.
- Harbord *v.* Bird—Desert Land—March 27, 1915—Affirmed.
- Harbord *v.* Daly—Desert Land—March 27, 1915—Affirmed.
- Harden, James B.—Homestead—October 26, 1915—Affirmed.
- Hardenberg, Lizzie D.—Desert Land—December 31, 1915—Remanded.
- Hardenberg, Peter—Homestead—December 13, 1915—Remanded.
- Harder, Jacob S.—Homestead—June 12, 1915—Letter to Reclamation Service.
- Harder, Jacob S.—Homestead—July 31, 1915—Affirmed.
- Hardesty, George W.—Homestead—April 23, 1915—Affirmed.
- Harding, Thomas H.—Homestead—March 6, 1915—Instructions.
- Harding, Thomas H.—Homestead—July 2, 1915—Affirmed.
- Harding, Thomas H.—Homestead—September 3, 1915—Instructions.
- Hare, Shelby, *et al.*—Mineral—September 3, 1915—Reversed.
- Hargreaves, Annie—Homestead—June 28, 1915—Reversed.
- Harlan, Bennie P.—Homestead—February 19, 1916—Certiorari Denied.
- Harley, Lee—Report—February 2, 1916—Affirmed.
- Harman, Noah—Homestead—January 20, 1916—Reversed.
- Harman, William L.—Homestead—November 23, 1915—Affirmed.
- Harmon, John—Homestead—April 6, 1915—Remanded.
- Harney Peak Tin Mining, Milling & Manufacturing Co.—Mineral—August 6, 1915—Affirmed.
- Harrell *v.* Sapp—Homestead—November 23, 1915—Affirmed.
- Harrell *v.* Sapp—Homestead—November 24, 1915—Reversed.
- Harrell *v.* Sapp, F. P.—Homestead—January 29, 1916—Motion Denied.
- Harrell *v.* Sapp, W. D.—Homestead—January 29, 1916—Motion Denied.
- Harrigan *v.* McKeever—Homestead—March 27, 1915—Motion Denied.
- Harrington, Florence G., *et al.*—Desert Land—August 26, 1915—Affirmed.
- Harrington, F. G., *et al.*—Desert Land—November 23, 1915—Motion Denied.
- Harris, Daniel—Soldiers' Additional—March 18, 1915—Letter to Geological Survey.
- Harris, Daniel—Homestead—November 15, 1915—Motion Denied.
- Harris, Daniel—Homestead—February 2, 1916—Petition Denied.
- Harris, David B.—Homestead—November 24, 1915—Affirmed.
- Harris, David B.—Homestead—January 20, 1916—Motion Denied.
- Harris, Leroy—Homestead—April 29, 1915—Vacated.
- Harris, Milly E.—Desert Land—April 27, 1915—Affirmed.
- Harris, Milly E.—Desert Land—June 5, 1915—Motion Denied.

- Harris, Schuyler—Homestead—August 3, 1915—Affirmed.
- Harris, Walter L.—Homestead—August 17, 1915—Remanded.
- Harris v. Frazier—Homestead—February 19, 1916—Remanded.
- Harris v. Hardin—Homestead—November 17, 1915—Reversed.
- Harris v. Heirs of Foley—Homestead—June 30, 1915—Affirmed.
- Harris v. Palmer—Homestead—August 18, 1915—Reversed.
- Harrison, William H.—Homestead—April 10, 1915—Affirmed.
- Harrop, Roy M.—Homestead—October 1, 1915—Time Allowed.
- Harrop, Roy M.—Homestead—December 13, 1915—Recalled and Vacated.
- Harry Lode Mining Claim—Mineral—March 17, 1915—Instructions.
- Harryman, Albert—Desert Land—December 17, 1915—Modified.
- Harsbarger v. Hueth—Mineral—August 13, 1915—Modified.
- Hart, Centennial A.—Desert Land—August 6, 1915—Vacated and Remanded.
- Hart v. De Long—Homestead—November 1, 1915—Affirmed.
- Hart v. De Long—Homestead—December 21, 1915—Motion Denied.
- Hartline Alaska Coal Co. *et al.*—Mineral—May 15, 1915—Affirmed.
- Hartline Alaska Coal Co. *et al.*—Mineral—October 15, 1915—Motion Denied.
- Hartt, D. N.—Soldiers' Additional—June 11, 1915—Motion Denied.
- Harvey, Asa—Desert Land—December 14, 1915—Vacated.
- Hassinger v. Hanson—Homestead—August 14, 1915—Affirmed.
- Hatch, Elsie H.—Homestead—July 28, 1915—Affirmed.
- Hatchett, Dock—Homestead—April 29, 1915—Affirmed.
- Hatton, Maybelle C.—Desert Land—July 22, 1915—Remanded.
- Haven, Thomas—Desert Land—April 30, 1915—Affirmed.
- Hawes, Florence B., assignee—Soldiers' Additional—November 11, 1915—Affirmed.
- Hawes, Florence B., assignee—Soldiers' Additional—December 14, 1915—Motion Denied.
- Hawkins, George C.—Homestead—April 22, 1915—Affirmed.
- Hawthorne, J. M., Gasmere Irrigation Co.—Reservoir—January 31, 1916—Affirmed.
- Hay, Melvin—Report—November 5, 1915—Affirmed.
- Hayden, Thomas J.—Homestead—September 25, 1915—Petition Allowed.
- Hayes, Arthur L.—Homestead—February 25, 1916—Reversed.
- Hayes, Doyle & Meyer—Homestead—March 18, 1915—Letter to Agricultural Department.
- Hayes, James A.—Homestead—August 27, 1915—Affirmed.
- Hayes, James A.—Homestead—December 1, 1915—Motion Denied.
- Haynie, James H.—Homestead—August 26, 1915—Affirmed.
- Hays v. Williams—Homestead—July 27, 1915—Affirmed.
- Hays v. Williams—Homestead—September 24, 1915—Motion Denied.
- Hayward, Frank—Homestead—September 14, 1915—Affirmed.
- Hebel v. Hanson—Desert Land—March 17, 1915—Affirmed.
- Hebel v. Hanson—Desert Land—April 29, 1915—Motion Denied.
- Heberling, Elizabeth M.—Desert Land—September 16, 1915—Remanded.
- Hebert v. Pepin—Isolated Tract—September 18, 1915—Affirmed.
- Hecht v. Robertson—Desert Land—September 14, 1915—Affirmed.
- Hedgecock *et al.* v. Purington Ditch and Reservoir Co.—Right of Way—August 23, 1915—Modified.
- Hedges, W. A., assignee—Soldiers' Additional—July 29, 1915—Affirmed.
- Hedges, W. A., assignee—Soldiers' Additional—October 15, 1915—Motion Denied.
- Hedrick, Joseph G., assignee—Soldiers' Additional—August 9, 1915—Affirmed.
- Hedrick, Joseph G., assignee—Soldiers' Additional—September 27, 1915—Motion Denied.
- Hedrick v. Brechbill—Desert Land—December 1, 1915—Affirmed.
- Heim v. Bennett—Desert Land—February 19, 1916—Affirmed.
- Heinricy, Henry J.—Reservoir—May 29, 1915—Rejected.
- Heirs of Everson v. Northern Pacific Ry. Co.—Homestead—November 18, 1915—Affirmed.
- Heisman *et al.* v. Dixon—Homestead—June 12, 1915—Motion Denied.
- Heisman, William, *et al.*—Homestead—April 12, 1915—Motion Allowed.
- Heitmiller, Henry W.—Homestead—October 1, 1915—Affirmed.
- Heitmiller, Henry W.—Homestead—December 1, 1915—Motion Denied.
- Henderson, E. B.—Mineral—August 6, 1915—Reversed.
- Henderson, Jackson—Homestead—March 27, 1915—Affirmed.
- Henderson, Jackson—Homestead—May 27, 1915—Instructions.

- Henderson *v.* State of Florida—Selection—June 25, 1915—Affirmed.
- Henderson *v.* State of Florida—Swamp—August 17, 1915—Motion Denied.
- Henderson *v.* State of Florida—Homestead—January 29, 1916—Petition Denied.
- Hendon, Edwin M.—Desert Land—June 30, 1915—Modified.
- Hendrickson, Andrew—Homestead—September 4, 1915—Affirmed.
- Hendrickson *v.* Stensrud—Homestead—February 7, 1916—Reversed.
- Hendryx, William T.—Homestead—March 17, 1915—Petition Denied.
- Henley *v.* Central Pacific Ry. Co.—Selection—March 31, 1915—Affirmed.
- Henness, Cornelius C.—Report—February 29, 1916—Affirmed.
- Henninger *v.* State of North Dakota—Homestead—May 29, 1915—Affirmed.
- Hensen, Richard F.—Desert Land—February 16, 1916—Affirmed.
- Hensen, William R., assignee—Soldiers' Additional—February 5, 1916—Remanded.
- Henton, Otis D.—Homestead—August 26, 1915—Reversed.
- Herndon, Rees F.—Desert Land—April 29, 1915—Remanded.
- Hero *v.* Delavigne—Timber and Stone—October 15, 1915—Reversed.
- Herrington, Lulu M.—Timber Land—August 5, 1915—Vacated and Remanded.
- Herrera, Maria Rita, *et al.*—Homestead—August 26, 1915—Vacated and Remanded.
- Herron, John—Timber and Stone—September 16, 1915—Affirmed.
- Hersfelder, William B.—Homestead—August 26, 1915—Vacated and Remanded.
- Hershberger *v.* Kanegieser—Homestead—April 26, 1915—Motion Denied.
- Herzog, Paul, *et al.*—Survey—December 15, 1915—Affirmed.
- Herzog *v.* Steet—Timber and Stone—August 14, 1915—Affirmed.
- Hess, Fred C.—Desert Land—March 17, 1915—Affirmed.
- Hess, Wilford W.—Homestead—July 30, 1915—Affirmed.
- Hesser *v.* Harris—Townsite—August 17, 1915—Affirmed.
- Heun, George, *et al.*—Homestead—April 24, 1915—Affirmed.
- Heun, George, *et al.*—Homestead—August 5, 1915—Motion Denied.
- Hickey *v.* Keene—Homestead—April 6, 1915—Affirmed.
- Hickman, J. H.—Homestead—July 29, 1915—Petition Denied.
- Hill, Norton & Moffat—Coal—June 30, 1915—Affirmed.
- Hill, Roland G., assignee—Soldiers' Additional—November 11, 1915—Affirmed.
- Hill, Samuel T.—Homestead—April 29, 1915—Affirmed.
- Hill, Samuel T.—Homestead—June 11, 1915—Motion Denied.
- Hill *v.* Fallon *et al.*—Desert Land—August 5, 1915—Reversed.
- Hill *v.* Shoenhut—Homestead—August 6, 1915—Affirmed.
- Hillhouse, Victor—Homestead—March 31, 1915—Reversed.
- Hillhouse, Victor—Homestead—May 17, 1915—Motion Denied.
- Hilt *v.* Gregoire—Homestead—April 21, 1915—Petition Denied.
- Hintze, Walter C.—Soldiers' Additional—August 4, 1915—Letter to Reclamation Service.
- Hintze, Walter C.—Soldiers' Declaratory Statement—November 23, 1915—Affirmed.
- Hintze, Walter C.—Soldiers' Additional—January 11, 1916—Motion Denied.
- Hirengren, Bertha—Homestead—November 13, 1915—Petition Denied.
- Hirsch *v.* Ruppel—Desert Land—August 4, 1915—Affirmed.
- Hirshland, Leo—Desert Land—June 8, 1915—Remanded.
- Hise, Mae E.—Desert Land—February 7, 1916—Reversed.
- Hobson, Roy M.—Desert Land—July 30, 1915—Affirmed.
- Hodges, Silas W.—Homestead—March 22, 1915—Remanded.
- Hodges, Thomas—Homestead—April 26, 1915—Remanded.
- Hodges, Thomas—Homestead—January 22, 1916—Reversed.
- Hodges, G. F., *v.* Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Hodges, G. M., *v.* Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Hoefler, Henry R.—Timber and Stone—April 27, 1915—Affirmed.
- Hoge, George A.—Homestead—November 11, 1915—Reversed.
- Hoisington *v.* Shay—Homestead—May 26, 1915—Motion Denied.
- Holgren, Nils W.—Homestead—August 27, 1915—Vacated and Remanded.
- Holland, Alonzo A.—Homestead—November 11, 1915—Vacated.
- Holland, William—Report—September 14, 1915—Affirmed.
- Hollenback, A. L., *et al.*—Desert Land—April 23, 1915—Vacated.
- Holliman, Oliver—Homestead—June 30, 1915—Affirmed.

- Hollingsworth, Arthur — Report — November 3, 1915 — Affirmed.
- Hollingsworth, Arthur — Report — January 28, 1916 — Motion Denied.
- Holmgren, Nils W. — Homestead — May 11, 1915 — Affirmed.
- Holmquist, Swan E. — Report — March 27, 1915 — Affirmed.
- Holohan, Mary A. — Desert Land — April 29, 1915 — Remanded.
- Holohan, Mary A. — Desert Land — January 3, 1916 — Affirmed.
- Holt, Estelene B. — Homestead — March 22, 1915 — Remanded.
- Holt v. Probasco *et al.* — Homestead — April 8, 1915 — Letter to General Land Office.
- Holt v. Probasco *et al.* — Homestead — May 14, 1915 — Modified.
- Holtz, Gustave C. — Homestead — April 22, 1915 — Remanded.
- Honnold v. Muller — Homestead — April 24, 1915 — Affirmed.
- Hooker v. Bryant — Homestead — January 29, 1916 — Affirmed.
- Hoover, Carl — Homestead — April 14, 1915 — Affirmed.
- Hopkins, Gertrude A. — Homestead — April 2, 1915 — Reversed.
- Hopkins, Milton I. — Homestead — April 29, 1915 — Affirmed.
- Horr, Anna B. — Report — January 31, 1916 — Reversed.
- Horton, Jonathan A. — Homestead — March 19, 1915 — Remanded.
- Horton, Oscar P. — Desert Land — February 25, 1916 — Reversed.
- Horvath, Josef — Homestead — February 25, 1916 — Petition Denied.
- Hoss, Susan — Timber and Stone — March 8, 1915 — Motion Denied.
- House, John M. — Homestead — March 30, 1915 — Letter to Geological Survey.
- Houston, Thomas J. — Homestead — April 21, 1915 — Remanded.
- Houtz, Eugene P. — Desert Land — February 26, 1916 — Affirmed.
- Howard, Alva J. — Timber and Stone — April 27, 1915 — Affirmed.
- Howard, C. L., *et al.* — Homestead — April 13, 1915 — Affirmed.
- Howlett, Daniel N. — Homestead — July 22, 1915 — Affirmed.
- Howry, H. K. — Report — August 30, 1915 — Petition Denied.
- Hoy, Reuben K. — Homestead — February 26, 1916 — Affirmed.
- Hoylman, Herbert L. — Homestead — January 18, 1916 — Reversed.
- Hronek, Emma — Homestead — October 11, 1915 — Remanded.
- Huachuca Water Co. — Right of Way — January 24, 1916 — Affirmed.
- Huachuca Water Co. v. Tomlinson — Homestead — January 22, 1916 — Affirmed.
- Hubbard, John F. — Homestead — July 26, 1915 — Affirmed.
- Hubbard v. Weigel — Homestead — July 29, 1915 — Petition Denied.
- Huffman, James O. — Homestead — November 23, 1915 — Reversed.
- Hufnagel, Michael F. — Homestead — February 12, 1916 — Affirmed.
- Hughes, Margaret A. — Homestead — October 18, 1915 — Reversed.
- Hughes v. Dunkin — Homestead — January 31, 1916 — Affirmed.
- Hughes v. Northern Pacific Ry. Co. — Homestead — March 18, 1915 — Affirmed.
- Humphreys, A. E. — Mineral — August 27, 1915 — Reversed.
- Humphreys, A. E., Northwest Timber Co., transferee — Report — January 29, 1916 — Reversed.
- Humphreys, C. T., Northwest Timber Co., transferee — Report — January 29, 1916 — Reversed.
- Humphreys, Harvey — Northwest Timber Co., transferee — Report — January 29, 1916 — Reversed.
- Humphreys, T. J., Northwest Timber Co., transferee — Report — January 29, 1916 — Reversed.
- Humphreys, William B. — Homestead — January 11, 1916 — Affirmed.
- Humphreys v. Ackerman — Scrip — August 21, 1915 — Modified.
- Hunnell, George T. — Report — March 27, 1915 — Affirmed.
- Hunt v. Sullivan — Homestead — December 11, 1915 — Remanded.
- Hunter, Edward P. — Homestead — June 28, 1915 — Remanded.
- Hunter, George, assignee — Soldiers' Additional — April 14, 1915 — Affirmed.
- Hunter, Wesley R. — Homestead — January 3, 1916 — Affirmed.
- Husband v. Sexton — Homestead — January 18, 1916 — Affirmed.
- Husby, John — Homestead — January 22, 1916 — Reversed.
- Husilton v. Northern Pacific Ry. Co. — Homestead — March 17, 1915 — Affirmed.
- Huskinson, E., *et al.* — Mineral — January 29, 1916 — Affirmed.
- Huston, Frank L. (3 cases) — Lieu Selection — March 27, 1915 — Motion Denied.
- Huston, Frank L., D. D. Tenney, transferee (17 cases) — Lieu Selection — April 10, 1915 — Motion Denied.
- Huston, F. L., *et al.* — Lieu Selection — May 27, 1915 — Remanded.
- Hutchins, Charnell R. — Homestead — April 19, 1915 — Reversed.
- Hutchinson, Joshua H. — Homestead — June 19, 1915 — Remanded.
- Hutton, James D. — Homestead — March 31, 1915 — Modified.

- Hutton, Robert L.—Homestead—March 31, 1915—Petition Denied.
- Hyde, F. A., & Co. (15 cases)—Lieu Selection—January 31, 1916—Affirmed.
- Hyde, F. A., *et al.*—Lieu Selection—February 4, 1916—Affirmed.
- Hyslop, Frederick R.—Homestead—June 1, 1915—Affirmed.
- Idaho Lists 65 and 68—Carey Act Selection—January 18, 1916—Remanded.
- Idaho List 72—Selection—August 6, 1915—Affirmed.
- Idaho, State of—Selection—December 17, 1915—Affirmed.
- Idaho, State of, *v. Avery et al.*—Homestead—May 3, 1915—Affirmed.
- Idaho, State of, *v. Harris*—Mineral—August 18, 1915—Reversed.
- Iles, Ida M. F.—Mineral—November 15, 1915—Affirmed.
- Ingerson, Ira B.—Desert Land—March 27, 1915—Remanded.
- Ingle *v. Johnson*—Desert Land—December 7, 1915—Motion Denied.
- Ingram, Arthur J.—Homestead—January 31, 1916—Affirmed.
- Ingram, Jesse W.—Homestead—February 25, 1916—Petition Denied.
- Interstate Gold Mining & Milling Co.—Mineral—August 30, 1915—Reversed.
- Interstate Gold Mining & Milling Co.—Mineral—November 3, 1915—Motion Denied.
- Iowa, Kansas, & Oklahoma Mining Association—January 26, 1916—Ruled to Show Cause.
- Ireland *v. Hill*—Homestead—April 29, 1915—Motion Denied.
- Irvine, Ben D.—Desert Land—June 5, 1915—Motion Denied.
- Irvine, Ben Dyer—Desert Land—July 30, 1915—Petition Denied.
- Jackson, Alexander H.—Homestead—January 22, 1916—Reversed.
- Jackson, Arthur H.—Report—June 29, 1915—Affirmed.
- Jackson, Edward—Homestead—December 2, 1915—Remanded.
- Jackson, Laura R.—Timber and Stone—April 27, 1915—Affirmed.
- Jackson *v. Northern Pacific Ry. Co.*—Homestead—March 19, 1915—Affirmed.
- Jacobs, Albert—Homestead—April 27, 1915—Remanded.
- Jacobs, Laura B.—Desert Land—February 26, 1916—Affirmed.
- Jahnke, Elsie—Homestead—January 28, 1916—Affirmed.
- Jahnke, Elsie—Homestead—January 29, 1916—Remanded.
- Jambor *v. Northern Pacific Ry. Co.*—Selection—December 21, 1915—Petition Denied.
- James, George W.—Homestead—June 1, 1915—Affirmed.
- James *v. Campbell*—Homestead—August 5, 1915—Affirmed.
- James *v. Campbell*—Homestead—November 3, 1915—Motion Denied.
- Jamison, John—Homestead—March 23, 1915—Remanded.
- Jantzen, Jacob P.—Homestead—June 12, 1915—Letter to Reclamation Service.
- Jantzen, Jacob P.—Homestead—July 28, 1915—Affirmed.
- Jardine *v. Williams*—Homestead—July 8, 1915—Reversed.
- Jardine *v. Williams*—Homestead—August 23, 1915—Motion Denied.
- Jemtgaard *v. Northern Pacific Ry. Co.*—Homestead—March 17, 1915—Affirmed.
- Jenkins, Charles F.—Desert Land—July 26, 1915—Affirmed.
- Jenkins, Jane—Desert Land—May 11, 1915—Reversed.
- Jenkins, John E.—Homestead—August 27, 1915—Affirmed.
- Jenkins, Lewis I.—Homestead—August 26, 1915—Affirmed.
- Jennings, Joe W.—Homestead—January 22, 1916—Reversed.
- Jensen *v. Gill*—Soldiers' Additional—November 23, 1915—Motion Denied.
- Jerome, Joseph (3 cases)—Indian Allotment—April 10, 1915—Affirmed.
- Jerome, Joseph, for Emil—Indian Allotment—April 23, 1915—Affirmed.
- Jerome, Joseph, for Rosilda—Indian Allotment—April 23, 1915—Affirmed.
- Jeter, T. H.—Homestead—April 12, 1915—Letter to General Land Office.
- Jevnager, Anton A.—Homestead—October 26, 1915—Modified.
- Jewel *v. Jewell*—Homestead—August 27, 1915—Affirmed.
- Jewell *v. Jeffers*—Homestead—June 5, 1915—Affirmed.
- Jillson *et al. v. Central Pacific Ry. Co.*—Selection—March 31, 1915—Affirmed.
- Jochems, Lambert R.—Homestead—January 20, 1916—Reversed.
- Jodon, Mattie L.—Desert Land—March 27, 1915—Affirmed.
- Johnson, A. K., *et al.*—Homestead—January 29, 1916—Motion Denied.
- Johnson, Albert T.—Townsite—November 5, 1915—Modified.
- Johnson, Charles W.—Report—October 7, 1915—Affirmed.

- Johnson, Edward—Homestead—January 20, 1916—Reversed.
- Johnson, Edwin—Homestead—April 29, 1915—Affirmed.
- Johnson, Harley I.—Homestead—April 29, 1915—Letter to Agricultural Dept.
- Johnson, Harley I.—Homestead—June 12, 1915—Petition Denied.
- Johnson, Henry—Homestead—June 10, 1915—Vacated.
- Johnson, J. Henry—Homestead—January 22, 1916—Reversed.
- Johnson, Oscar L.—Homestead—March 9, 1915—Affirmed.
- Johnson, Oscar L.—Homestead—July 27, 1915—Motion Denied.
- Johnson, Oscar M.—Timber and Stone—June 30, 1915—Affirmed.
- Johnson, P. G., assignee—Soldiers' Additional—March 19, 1915—Motion Denied.
- Johnson, Walter H.—Desert Land—June 17, 1915—Affirmed.
- Johnson, William O., assignee—Soldiers' Additional—October 22, 1915—Affirmed.
- Johnson v. Barker—Homestead—November 1, 1915—Affirmed.
- Johnson v. Daley—Desert Land—April 27, 1915—Affirmed.
- Johnson v. Filmer—Homestead—April 27, 1915—Affirmed.
- Johnson v. France—Timber and Stone—September 22, 1915—Affirmed.
- Johnson v. France—Timber and Stone—December 1, 1915—Motion Denied.
- Johnson v. Hoage—Homestead—May 26, 1915—Affirmed.
- Johnson v. Northern Pacific Ry Co.—Homestead—March 19, 1915—Affirmed.
- Johnson v. Sterns—Homestead—January 28, 1916—Affirmed.
- Johnson v. Welda—Homestead—December 13, 1915—Affirmed.
- Johnsrud, Albert W., assignee—Soldiers' Additional—February 10, 1916—Affirmed.
- Johnston, Riley—Homestead—March 27, 1915—Modified.
- Johnston, William—Homestead—June 12, 1915—Reversed.
- Jones, Edward, assignee—Soldiers' Additional—June 8, 1915—Motion Denied.
- Jones, George, assignee—Soldiers' Additional—June 1, 1915—Affirmed.
- Jones, Mary Ann—Homestead—August 5, 1915—Reversed.
- Jones, Ora F.—Homestead—August 4, 1915—Affirmed.
- Jones, William D.—Timber and Stone—October 1, 1915—Affirmed.
- Jones v. Caldwell—Homestead—April 14, 1915—Affirmed.
- Jones v. Dameron—Homestead—January 24, 1916—Affirmed.
- Jones v. Douglass—Homestead—March 3, 1915—Affirmed.
- Jones v. Dunn—Homestead—February 29, 1916—Affirmed.
- Jones v. Johnson—Homestead—August 18, 1915—Affirmed.
- Jones v. Jones—Homestead—September 3, 1915—Affirmed.
- Jones v. O'Neill (now Smith)—Desert Land—January 26, 1916—Affirmed.
- Jordan, William F.—Desert Land—April 27, 1915—Affirmed.
- Jorgenson, Ole—Mineral—April 20, 1915—Approved.
- Jozsa v. Johnson—Homestead—February 2, 1916—Motion Denied.
- Judy, David P.—Letter to Reclamation Service—March 3, 1915.
- Judy, David P.—Homestead—June 30, 1915—Remanded.
- Jurgens, Matthys—Homestead—August 23, 1915—Affirmed.
- Juski, Peter, Grieve, Robert, transferee—Homestead—March 6, 1915—Motion Remanded.
- Justman, Charles J.—Homestead—November 5, 1915—Affirmed.
- Joyce, Robert—Homestead—June 17, 1915—Affirmed.
- Kamp v. Turner—Homestead—May 15, 1915—Motion Denied.
- Kampf, Charles F.—Homestead—May 3, 1915—Affirmed.
- Karki v. Carlson *et al.*—Homestead—December 15, 1915—Petition Granted.
- Karki v. Carlson *et al.*—Homestead—February 19, 1916—Affirmed.
- Karrop, Roy M.—Homestead—August 9, 1915—Affirmed.
- Kay, James M.—Homestead—August 17, 1915—Motion Denied.
- Kean, John R.—Homestead—September 3, 1915—Affirmed.
- Kearney v. Bergeron—Homestead—August 11, 1915—Affirmed.
- Kearney v. Bergeron—Homestead—October 27, 1915—Motion Denied.
- Kearney v. Gillespie—Mineral—February 29, 1916—Petition Entered.
- Keenan, Pat—Homestead—August 14, 1915—Affirmed.
- Keener v. Kehoe—Desert Land—July 23, 1915—Motion Denied.
- Keeth, Arthur M.—Desert Land—January 18, 1916—Reversed.
- Keith, John—Homestead—April 10, 1915—Remanded.
- Keller, Frank—Selection—August 21, 1915—Affirmed.
- Kelley v. Zbonark—Homestead—December 13, 1915—Motion Denied.

- Kellogg, Henry H.—Soldiers' Additional—April 20, 1915—Motion Denied.
- Kelly, Harry H.—Homestead—September 14, 1915—Affirmed.
- Kelly *v.* Zbonark—Homestead—August 6, 1915—Affirmed.
- Kelsey, Charles A.—Homestead—September 27, 1915—Affirmed.
- Kemmes, William, Simpson, S. D., transferee—Homestead—March 6, 1915—Motion Remanded.
- Kempthorne *v.* Darrough—Desert Land—January 31, 1916—Reversed.
- Kennedy, John D.—Homestead—June 11, 1915—Remanded.
- Kennedy *v.* Nichols—Homestead—March 27, 1915—Affirmed.
- Keplinger—Charles H.—Homestead—December 31, 1915—Affirmed.
- Keplinger, Charles H.—Homestead—February 5, 1916—Motion Denied.
- Kerby *v.* Flynn—Scrip—January 31, 1916—Affirmed.
- Kermode, Richard O.—Homestead—October 11, 1915—Remanded.
- Kess, Will L., *et al.*—Survey—September 3, 1915—Affirmed.
- Kester, Charles J., J. A. Dowlin, transferee—Homestead—August 6, 1915—Affirmed.
- Keys, George W.—Report—April 26, 1915—Affirmed.
- Kief *v.* Stacey—Desert Land—January 26, 1916—Affirmed.
- Kiely, William C.—Homestead—February 26, 1916—Affirmed.
- Kilbourn, Charlie S.—Homestead—February 25, 1916—Affirmed.
- Killion, Brant D.—Homestead—January 26, 1916—Vacated.
- Kilpatrick, Katherine F.—Desert Land—December 7, 1915—Modified.
- Kilpatrick *v.* Dignan—Desert Land—June 11, 1915—Remanded.
- Kilpatrick *v.* Dignan—Homestead—February 29, 1916—Remanded.
- King, Mary L.—Homestead—August 11, 1915—Affirmed.
- King *v.* Bennett—Homestead—January 31, 1916—Affirmed.
- King *v.* Kenny—Homestead—March 31, 1915—Affirmed.
- Kinread, Thomas—Homestead—July 31, 1915—Remanded.
- Kipp, Louis—Homestead—March 31, 1915—Remanded.
- Kirk, J. T., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Kirkpatrick, Albert F.—Timber and Stone—April 22, 1915—Motion Denied.
- Kirsh, Della B.—Homestead—January 22, 1916—Reversed.
- Kiser *v.* Copple—Homestead—January 31, 1916—Affirmed.
- Kizer, Henry F.—Timber and Stone—April 29, 1915—Affirmed.
- Klein, George J.—Desert Land—January 22, 1916—Vacated.
- Kline, Jacob C.—Homestead—February 12, 1916—Affirmed.
- Klinker *v.* Northern Pacific Ry. Co. *et al.*—Homestead—May 6, 1915—Modified.
- Klinker *v.* Northern Pacific Ry. Co. *et al.*—Homestead—March 6, 1915—Motion Denied.
- Klinker *v.* Northern Pacific Ry. Co.—Selection—June 25, 1915—Petition Remanded.
- Knapp *v.* Walter—Homestead—April 27, 1915—Motion Denied.
- Kneil, Robert H.—Homestead—August 26, 1915—Affirmed.
- Kneil, Robert H.—Homestead—October 26, 1915—Motion Denied.
- Knickerbocker *v.* Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Knight *v.* Northern Pacific Ry. Co.—Homestead—March 9, 1915—Affirmed.
- Knotts *et al.* *v.* State of Oregon *et al.*—Selection—June 5, 1915—Affirmed.
- Knowlton, Daniel—Homestead—March 23, 1915—Affirmed.
- Knox, H. J., Executor of H. Knox—Report—February 29, 1916—Affirmed.
- Knudeson *v.* Hacking—Homestead—January 19, 1916—Affirmed.
- Knuteson *v.* La Porte—Desert Land—September 7, 1915—Affirmed.
- Knuth, Louis—Homestead—January 29, 1916—Dismissed.
- Knutson *v.* Vandenberg—Homestead—June 17, 1915—Affirmed.
- Knutson *v.* Vandenberg—Homestead—September 14, 1915—Motion Denied.
- Kocher, Bertha J.—Homestead—March 17, 1915—Reversed.
- Koerner *v.* Furlong—Homestead—December 7, 1915—Affirmed.
- Kolde, George—Homestead—January 13, 1916—Modified.
- Kopsho *v.* Lowe—Desert Land—July 28, 1915—Reversed.
- Korah *v.* Northern Pacific Ry. Co.—Homestead—December 18, 1915—Affirmed.
- Kouts *v.* Johnson—Desert Land—July 26, 1915—Reversed.
- Kouts *v.* Johnson—Desert Land—November 3, 1915—Motion Denied.
- Kovacich *v.* Motheral—Homestead—August 26, 1915—Affirmed.
- Kraft, William H.—Desert Land—March 31, 1915—Remanded.
- Kraft, William H.—Homestead—May 4, 1915—Reversed.

- Krause, Agnes—Homestead—June 12, 1915—Letter to Reclamation Service.
- Krause, Agnes—Homestead—June 28, 1915—Affirmed.
- Krause, Anna—Homestead—June 12, 1915—Letter to Reclamation Service.
- Krause, Anna—Homestead—July 28, 1915—Affirmed.
- Krauter, John—Homestead—March 23, 1915—Remanded.
- Kribs, F. A., C. A. Smith Fir Co.—Lieu Selection—August 26, 1915—Petition Denied.
- Kribs, Frederick D.—Homestead—January 31, 1916—Affirmed.
- Kriz v. Stepka—Homestead—December 31, 1915—Affirmed.
- Krogsrud, Wergine—Homestead—April 22, 1915—Vacated.
- Krohn, Johannes H.—Homestead—March 27, 1915—Affirmed.
- Krohn, Johannes H.—Homestead—May 26, 1915—Motion Denied.
- Kruse, Frederick D.—Homestead—April 29, 1915—Affirmed.
- Kruse, Julius—Homestead—March 9, 1915—Affirmed.
- Kruse v. Heirs of Hultman—Homestead—July 2, 1915—Affirmed.
- Kruse v. Heirs of Hultman—Homestead—September 8, 1915—Motion Denied.
- Kuepfer, G., Hulett, H. P., transferee—Homestead—March 6, 1915—Motion Remanded.
- Kuhler v. Caie—Homestead—July 29, 1915—Affirmed.
- Kuhr, H. C., assignee—Soldiers' Additional—June 8, 1915—Affirmed.
- Kulp, Arthur J.—Homestead—August 11, 1915—Affirmed.
- Kulp, Arthur J.—Homestead—October 29, 1915—Motion Denied.
- Kunz, Ezra L.—Homestead—January 31, 1916—Affirmed.
- Kyniston, Julia A.—Homestead—July 16, 1915—Petition Granted.
- Laarveld, Ada I.—Homestead—October 23, 1915—Affirmed.
- LaChat, Zelda B.—Desert Land—February 29, 1916—Affirmed.
- Lackay, Dora M.—Homestead—June 28, 1915—Affirmed.
- Ladeau, Ellen (3 cases)—Allotment—March 25, 1915—Affirmed.
- Laher, Frank J.—Timber and Stone—April 27, 1915—Affirmed.
- Lambeck v. Evanoff—Homestead—January 31, 1916—Affirmed.
- Lamere, Eliza (4 cases)—Allotment—March 25, 1915—Affirmed.
- Lamey, James—Homestead—July 31, 1915—Affirmed.
- Lammers v. Hayes—Homestead—August 2, 1915—Affirmed.
- Lane, Robert M.—Homestead—March 23, 1915—Remanded.
- Laney, Hiram T.—Desert Land—July 9, 1915—Remanded.
- Lange, Paul J., Heirs of—Homestead—February 7, 1916—Affirmed.
- Lange, Robert—Soldiers' Additional—July 2, 1915—Affirmed.
- Lange v. Northern Pacific Ry. Co.—Mineral—July 8, 1915—Motion Allowed.
- Lange v. Northern Pacific Ry. Co.—Selection—December 31, 1915—Petition Denied.
- Lantry, Pauline H.—Homestead—October 7, 1915—Affirmed.
- Lantry, Pauline H.—Homestead—February 4, 1916—Motion Remanded.
- Larable, S. E., executor—Report—February 29, 1916—Affirmed.
- LaRoche v. Edland—Homestead—January 4, 1916—Affirmed.
- Laroque, Oliver (for Frank)—Allotment—March 27, 1915—Affirmed.
- Laroque, Oliver (for Peter)—Allotment—March 27, 1915—Affirmed.
- Larsen v. Northern Pacific Ry. Co.—Homestead—March 17, 1915—Affirmed.
- Larson, Lewis A. D.—Homestead—December 18, 1915—Affirmed.
- Larson, Thorwald—Homestead—July 23, 1915—Reversed.
- Lasalle, M. J.—Indian Allotment—May 15, 1915—Affirmed.
- Lassen Electric Co.—Right of Way—May 12, 1915—Instructions.
- Latray, Rosalee, for Eddie and W. P. (2 cases)—Indian Allotment—May 15, 1915—Affirmed.
- Latray, Rosalee, for Josephine—Indian Allotment—May 15, 1915—Affirmed.
- Lau, Laura M.—Desert Land—February 2, 1916—Affirmed.
- Laub, Marion W.—Homestead—February 14, 1916—Modified.
- Lauters v. Ness—Homestead—July 27, 1915—Affirmed.
- Lautz, Adolph W.—Homestead—November 19, 1915—Affirmed.
- Lautz, Adolph W.—Homestead—January 26, 1916—Motion Denied.
- Lauver et al. v. Mahan—Mineral—July 27, 1915—Affirmed.
- Lavelle, Timothy C.—Homestead—October 21, 1915—Petition Granted.
- Lavin, A. G., assignee—Desert Land—October 7, 1915—Affirmed.
- Lay, Charles J.—Homestead—March 27, 1915—Affirmed.
- Layland Placer Mining Claim—Mineral—March 17, 1915—Instructions.
- LeBlanc v. Smith—Homestead—July 27, 1915—Affirmed.

- Ledbetter, Mary J.—Homestead—January 26, 1916—Reversed.
- Ledford v. Northern Pacific Ry. Co.—Homestead—December 18, 1915—Affirmed.
- Lee, Farnham E.—Homestead—July 27, 1915—Affirmed.
- Lee, William—Homestead—June 19, 1915—Affirmed.
- Leeper, Henry S.—Homestead—February 4, 1916—Affirmed.
- Lees, Ora T.—Homestead—January 22, 1916—Reversed.
- Leezer, M. A., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Lemos *et al.* v. Central Pacific Ry. Co.—Selection—July 23, 1915—Modified.
- Lennox v. Neilson—Homestead—April 29, 1915—Affirmed.
- Lepper, Benjamin F.—Lieu Selection—January 31, 1916—Remanded.
- Letrich, Joseph—Homestead—October 4, 1915—Affirmed.
- Lewis, F. J., assignee—Soldiers' Additional—July 29, 1915—Affirmed.
- Lewis, Frank J., assignee—Soldiers' Additional—October 21, 1915—Motion Denied.
- Lewis, Freeborn S.—Petition—March 31, 1915—Affirmed.
- Lewis, Noah R.—Homestead—January 3, 1916—Affirmed.
- Lias v. Wilson—Homestead—January 31, 1916—Affirmed.
- Lierly, W. S., *et al.*—Mineral—May 3, 1915—Affirmed.
- Liese, Johannes—Homestead—June 17, 1915—Letter to Reclamation Service.
- Liese, Johannes—Homestead—August 4, 1915—Affirmed.
- Lietz, Helena—Homestead—January 22, 1916—Reversed.
- Lietz, Oscar—Homestead—January 31, 1916—Reversed.
- Liffrigg, Math—Homestead—October 23, 1915—Reversed.
- Likins, Frank L.—Desert Land—February 26, 1916—Affirmed.
- Liming, M. J.—Report—November 23, 1915—Affirmed.
- Linck, John W.—Coal—March 17, 1915—Letter to Geological Survey.
- Linck, John W.—Coal—June 23, 1915—Affirmed.
- Lindblom, Lewis C.—Homestead—October 1, 1915—Appeal Dismissed.
- Lindley v. Anderson—Homestead—April 27, 1915—Affirmed.
- Lindsay, Elmer—Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Lindsay, William—Homestead—April 30, 1915—Affirmed.
- Lindsey, Harriet B.—Desert Land—July 29, 1915—Remanded.
- Lindsey, Margaret E.—Desert Land—July 29, 1915—Remanded.
- Lindsey, William—Homestead—April 21, 1915—Affirmed.
- Lindsey v. Shively—Homestead—September 7, 1915—Affirmed.
- Lindsey v. Shively—Homestead—November 10, 1915—Motion Denied.
- Lindstrom, Theodore—Homestead—January 22, 1916—Reversed.
- Liner v. Northern Pacific Ry. Co.—Homestead—November 24, 1915—Affirmed.
- Liner v. Northern Pacific Ry. Co.—Homestead—January 29, 1916—Motion Denied.
- Lingel, Charles—Homestead—January 20, 1916—Reversed.
- Lipe, Ray M.—April 21, 1915—Letter to Geological Survey.
- Lipe, Ray M.—Homestead—May 27, 1915—Remanded.
- Lipscomb, Fannie—Homestead—July 26, 1915—Remanded.
- Liskey, William—Homestead—February 10, 1916—Remanded.
- Lisy, Victoria M.—Homestead—January 18, 1916—Remanded.
- Little, Peter C., assignee—Soldiers' Additional—October 26, 1915—Affirmed.
- Livengood, Otto C.—Homestead—February 4, 1916—Remanded.
- Lloyd, Corda—Homestead—July 28, 1915—Affirmed.
- Lloyd, John N.—Homestead—March 23, 1915—Motion Allowed.
- Lockhart, William—Homestead—March 23, 1915—Remanded.
- Lockwood, George N.—Report—August 30, 1915—Petition Denied.
- Lockwood, Leroy—Homestead—April 14, 1915—Modified.
- Logan, Aimes—Homestead—January 31, 1916—Affirmed.
- Logan, James—Coal—November 5, 1915—Petition Denied.
- Lomeland, Jennie B.—Homestead—May 26, 1915—Remanded.
- Lomeland, Jennie B.—Homestead—January 29, 1916—Reversed.
- Long v. Southern Pacific Ry. Co.—Desert Land—April 21, 1915—Motion Denied.
- Longnecker, John—Repayment—August 18, 1915—Affirmed.
- Lopez v. DePadilla—Homestead—October 22, 1915—Affirmed.
- Lopez v. State of California—Selection—April 14, 1915—Affirmed.
- Lorenz v. Strong—Homestead—July 29, 1915—Affirmed.
- Los Angeles, City of—Petition—April 22, 1915—Instructions.

- Lovelace, Ida M.—Homestead—October 29, 1915—Modified.
- Lovelace, Myrtle—Homestead—January 26, 1916—Remanded.
- Lovelace, William R.—Homestead—March 27, 1915—Remanded.
- Loze v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Lucart, Robert P.—Homestead—May 10, 1915—Motion Denied.
- Luce, Ronald S.—Homestead—January 20, 1916—Reversed.
- Luddecke v. Lampson—Homestead—June 30, 1915—Remanded.
- Ludowissi, Nick M.—Homestead—January 22, 1916—Reversed.
- Ludvikson, Gabriel—Homestead—March 6, 1915—Reversed.
- Lujan, Frank—Homestead—April 29, 1915—Affirmed.
- Lund, John—Desert Land—April 29, 1915—Affirmed.
- Lundblad, Abel E.—Homestead—January 29, 1916—Affirmed.
- Lundgren, Marhilda, Whitaker, D. R., transferee—Homestead—March 6, 1915—Motion Remanded.
- Luster, T. O., *et al.*—Homestead—January 8, 1916—Vacated.
- Lustig, Jacob S.—Warrant—January 26, 1916—Affirmed.
- Lutzinger, L. M., *et al.*—Desert Land—January 29, 1916—Affirmed.
- Lynch, Henry L.—Desert Land—March 27, 1915—Remanded.
- Lynch, Jeannie E.—Homestead—April 27, 1915—Affirmed.
- Lynch, Timothy C.—Homestead—August 23, 1915—Affirmed.
- Lynden, John R.—Desert Land—February 16, 1916—Affirmed.
- Lyon, Hanford T.—Report—February 29, 1916—Affirmed.
- Lyon v. Northern Pacific Ry. Co.—Homestead—December 18, 1915—Affirmed.
- Lyons, Mary—Report—November 16, 1915—Reversed.
- Lytle, Jessie M.—Desert Land—July 26, 1915—Affirmed.
- Lytle, William P.—Report—January 15, 1916—Reversed.
- Maag, Emma M.—Homestead—July 2, 1915—Instructions.
- Mabry, Tilmon D.—Homestead—February 12, 1916—Affirmed.
- Mack, Herbert D.—Homestead—January 20, 1916—Reversed.
- MacNichol, Emma Y.—Homestead—May 29, 1915—Affirmed.
- Madden, Merritt K.—Homestead—July 27, 1915—Affirmed.
- Madden, Merritt K.—Homestead—September 27, 1915—Motion Denied.
- Maddox, Richard W.—Homestead—April 27, 1915—Affirmed.
- Madril, Felix—Homestead—May 10, 1915—Affirmed.
- Magaw, John O.—Desert Land—May 3, 1915—Motion Allowed.
- Magaw, Theophilus—Homestead—July 8, 1915—Modified.
- Maguire *et al.* v. State of Idaho (2 cases)—Homestead—April 19, 1915—Reversed.
- Mahaffey, Daniel P.—Homestead—August 26, 1915—Modified.
- Mahaffey, Jesse E.—Homestead—April 17, 1915—Affirmed.
- Mahan v. State of Minnesota—Homestead—November 5, 1915—Affirmed.
- Mahugh, Reuben G.—Homestead—October 30, 1915—Affirmed.
- Mahoney, John T.—Homestead—May 20, 1915—Instructions.
- Mahoney, Michael—Homestead—March 17, 1915—Affirmed.
- Maier, Adam—Homestead—April 29, 1915—Letter to Reclamation Service.
- Maier, Adam—Homestead—June 10, 1915—Letter to Geological Survey.
- Maier, Adam—Homestead—July 17, 1915—Instructions.
- Maki, John—Homestead—April 29, 1915—Motion Sustained.
- Makres v. Egan—Homestead—February 14, 1916—Affirmed.
- Malcom, John F.—Homestead—January 18, 1916—Instructions.
- Malfa v. Northern Pacific Ry. Co.—Homestead—October 11, 1915—Reversed.
- Malone v. Northern Pacific Ry. Co.—Selection—January 4, 1916—Affirmed.
- Malvin, Joseph W.—Homestead—April 26, 1915—Motion Modified.
- Mammoth Iron Mines Co.—Mineral—June 8, 1915—Affirmed.
- Manger, Richard—Desert Land—April 23, 1915—Reversed.
- Manhattan Calumet Mining Co.—Mineral—July 2, 1915—Affirmed.
- Manley v. Mace—Desert Land—July 2, 1915—Affirmed.
- Manninen, Hilda—Homestead—December 15, 1915—Reversed.
- Mannix, William H.—Desert Land—February 19, 1916—Reversed.
- Manson v. Bach—Homestead—September 3, 1915—Remanded.
- Mansur, Charles M.—Homestead—July 30, 1915—Motion Denied.
- Marchand, Joseph—Homestead—February 12, 1916—Affirmed.
- Marchel, John, *et al.*—Homestead—March 27, 1915—Instructions.
- Marden v. Thompson, A. A.—Homestead—June 1, 1915—Motion Denied.

- Marden *v.* Thompson, Alice—Homestead—June 1, 1915—Motion Denied.
- Mardock, William S.—Homestead—April 27, 1915—Affirmed.
- Mares, Isaac, *et al.*—Homestead—August 18, 1915—Reversed.
- Marguart, George W.—Desert Land—July 8, 1915—Modified.
- Marken, Fritz—Homestead—January 20, 1916—Reversed.
- Marks *v.* Southern Pacific Ry. Co.—Homestead—April 21, 1915—Motion Denied.
- Marsden, Robert, Sr.—Homestead—April 29, 1915—Affirmed.
- Marsh, Alonzo A.—Report—February 29, 1916—Affirmed.
- Marsh *v.* Rambosek—Homestead—October 21, 1915—Affirmed.
- Marsh *v.* Rambosek—Homestead—January 29, 1916—Motion Denied.
- Marsh *v.* Storm—Timber and Stone—January 3, 1916—Modified.
- Marshall, E. P.—Desert Land—December 7, 1915—Modified.
- transferee—Homestead—March 6, 1915—Motion Remanded.
- Marshall, M. A., Whitaker, D. R., 1915—Motion Remanded.
- Marston *v.* Wells—Homestead—June 17, 1915—Motion Denied.
- Martens, H. J., *et al.*—Desert Land—May 22, 1915—Motion Denied.
- Martin, Athol A.—Homestead—January 3, 1916—Affirmed.
- Martin, James—Homestead—December 22, 1915—Affirmed.
- Martin, Louis C.—Homestead—December 14, 1915—Affirmed.
- Martin *v.* Bacon—Desert Land—April 29, 1915—Affirmed.
- Martin *v.* Morris—Homestead—October 29, 1915—Affirmed.
- Martin *v.* State of Minnesota—Selection—January 26, 1916—Affirmed.
- Martinez, Eva—Soldiers' Homestead—April 27, 1915—Affirmed.
- Martinez, Francisco—Homestead—April 29, 1915—Modified.
- Martoney, Ernest F.—Homestead—October 1, 1915—Affirmed.
- Mason, Jabez C.—Homestead—March 3, 1915—Affirmed.
- Mason, John W.—Homestead—April 12, 1915—Affirmed.
- Mason, Mitchell, Whitaker, D. R., transferee—Homestead—March 6, 1915—Motion Remanded.
- Mason *v.* Weld, Heirs of—Homestead—August 5, 1915—Affirmed.
- Massey Reservoir, W. T. Massey—Reservoir—February 26, 1916—Remanded.
- Massey, William C.—Homestead—October 4, 1915—Affirmed.
- Mast, Clyde J.—Homestead—April 29, 1915—Affirmed.
- Matanuska Coal Mining and Development Co.—Coal—January 26, 1916—Affirmed.
- Mathews, W. J., Hulett, H. P., transferee—Homestead—March 6, 1915—Motion Remanded.
- Mathews, Robert, Kendrick, J. B., transferee—Homestead—March 6, 1915—Motion Remanded.
- Matousek *v.* Van Camp—Desert Land—February 16, 1916—Affirmed.
- Matte, Alzar—Homestead—July 16, 1915—Remanded.
- Matthew, Maggie—Report—January 3, 1916—Certiorari Denied.
- Maxey, John D., assignee—Soldiers' Additional—September 25, 1915—Affirmed.
- Maxey, J. D., assignee—Soldiers' Additional—November 23, 1915—Motion Denied.
- May, Charles C.—Homestead—July 26, 1915—Remanded.
- May *v.* Dunn—Homestead—February 4, 1916—Affirmed.
- May *v.* Dunn—Desert Land—February 14, 1916—Reversed.
- Mayfield, George M.—Timber and Stone—June 29, 1915—Affirmed.
- Mayfield, Ira A., Howard C. Kerr, assignee—Homestead—February 12, 1916—Affirmed.
- Maynard, Maurice W.—Homestead—January 3, 1916—Affirmed.
- Mayo, Abbott L.—Homestead—November 23, 1915—Affirmed.
- Mays, J. M.—Homestead—January 31, 1916—Affirmed.
- McAllister, Victor C.—Homestead—April 27, 1915—Motion Denied.
- McAlmond, Maury H.—Homestead—September 3, 1915—Affirmed.
- McCall, Harry M.—Desert Land—March 31, 1915—Affirmed.
- McCall, M. Elizabeth—Homestead—January 29, 1916—Affirmed.
- McCall, T. D., *et al.*—Desert Land—April 29, 1915—Affirmed.
- McCandless, David C.—Homestead—October 11, 1915—Affirmed.
- McCarthy, Justin—Homestead—March 23, 1915—Remanded.
- McCarthy *v.* White—Homestead—June 8, 1915—Affirmed.
- McCarty, W. J., Hulett, H. P., transferee—Homestead—March 6, 1915—Motion Remanded.
- McCarty *v.* Lovegren—Homestead—April 10, 1915—Petition Denied.
- McCauley *v.* Jenkins—Homestead—October 21, 1915—Reversed.
- McCauley *v.* Jenkins—Homestead—December 13, 1915—Motion Denied.
- McChesney *v.* Northern Pacific Ry. Co.—Homestead—December 18, 1915—Affirmed.

- McClain, Marcellus A.—Report—April 20, 1915—Motion Denied.
- McClain, Zachariah D.—Homestead—June 30, 1915—Affirmed.
- McCleary v. Martin—Homestead—June 30, 1915—Affirmed.
- McClellan, John H.—Homestead—January 20, 1916—Reversed.
- McClelland v. Nielson—Homestead—February 4, 1916—Affirmed.
- McCloud River Lumber Co., transferee (2 cases)—Selection—March 17, 1915—Affirmed.
- McClure, Amanda E.—Homestead—January 20, 1916—Reversed.
- McCoon, John C.—Homestead—April 10, 1915—Affirmed.
- McCormick, James F.—Homestead—July 31, 1915—Affirmed.
- McCourt, Lizzie B.—Homestead—May 14, 1915—Affirmed.
- McCown v. Skinner—Homestead—August 23, 1915—Affirmed.
- McCown v. Skinner—Homestead—December 15, 1915—Motion Denied.
- McCracken, Bernie E.—Homestead—February 4, 1916—Affirmed.
- McCracken v. Banes—Homestead—September 24, 1915—Remanded.
- McCracken v. Northern Pacific Ry. Co.—Homestead—November 24, 1915—Affirmed.
- McCracken v. Northern Pacific Ry. Co.—Homestead—January 29, 1916—Motion Denied.
- McCullough, H. P., guardian—Homestead—November 3, 1915—Affirmed.
- McDonald, Edgar H.—Homestead—March 23, 1915—Remanded.
- McDonald, John H.—Timber and Stone—April 22, 1915—Petition Denied.
- McDonald, John R.—Homestead—March 27, 1915—Petition Denied.
- McDonald, Julia—Homestead—August 3, 1915—Affirmed.
- McDonald v. Hunter—Desert Land—April 22, 1915—Motion Denied.
- McDonald v. Northern Pacific Ry. Co.—Homestead—March 22, 1915—Affirmed.
- McDonald v. Townsend—Homestead—December 18, 1915—Affirmed.
- McDonald v. Townsend—Homestead—January 29, 1916—Motion Denied.
- McDougal *et al.* v. State of Oregon—Homestead—March 31, 1915—Affirmed.
- McFadden, George H.—Right of Way—August 18, 1915—Affirmed.
- McFarland, Homer—Homestead—November 11, 1915—Reversed.
- McFarland v. Southern Pacific Ry. Co.—Desert Land—March 27, 1915—Motion Denied.
- McFate v. Epstein—Desert Land—June 17, 1915—Certiorari Denied.
- McFee v. St. Clair—Homestead—April 27, 1915—Affirmed.
- McFry v. Northern Pacific Ry. Co.—Homestead—June 8, 1915—Vacated.
- McGee, Joel E.—Homestead—February 12, 1916—Affirmed.
- McGee v. Mogle—Homestead—October 23, 1915—Affirmed.
- McGinley v. Schultz—Homestead—June 30, 1915—Affirmed.
- McGinnis, Anderson L.—Homestead—January 26, 1916—Affirmed.
- McGraw v. Smith—Homestead—February 29, 1916—Affirmed.
- McHugh v. Northern Pacific Ry. Co.—Homestead—December 18, 1915—Affirmed.
- McIntosh, Alexander W., Heirs of—Desert Land—September 8, 1915—Remanded.
- McIntosh, Hattie E.—Desert Land—June 11, 1915—Remanded.
- McIntyre, Samuel, assignee—Soldiers' Additional—April 23, 1915—Affirmed.
- McKay v. Buford—Homestead—March 30, 1915—Affirmed.
- McKee v. Rife—Desert Land—September 7, 1915—Affirmed.
- McKelvey, Effie B.—Desert Land—April 27, 1915—Affirmed.
- McKelvey, Effie B.—Desert Land—June 5, 1915—Motion Denied.
- McKenney, Ernest L.—Homestead—January 22, 1916—Reversed.
- McKenzie, Harriet—Report—September 14, 1915—Reversed.
- McKeon, William D.—Soldiers' Additional—February 26, 1916—Affirmed.
- McKerlis v. Lloyd—Homestead—August 5, 1915—Affirmed.
- McKinney, Dana—Homestead—December 21, 1915—Affirmed.
- McKinnon v. Gove—Desert Land—November 23, 1915—Hearing Ordered.
- McKoin, Clarence E., assignee—Soldiers' Additional—August 6, 1915—Affirmed.
- McLaren, James F.—Homestead—April 21, 1915—Affirmed.
- McLaughlin, George—Homestead—July 26, 1915—Affirmed.
- McLean, Grant—Desert Land—June 17, 1915—Affirmed.
- McLellan, Angus, Hulett, H. P., transferee—Homestead—March 6, 1915—Motion Remanded.
- McMahan, Benjamin, assignee—Soldiers' Additional—February 5, 1916—Affirmed.
- McMeans, Dewitt C.—Homestead—September 8, 1915—Affirmed.
- McMillan, Murdo—Homestead—January 20, 1916—Reversed.

- McMillon, Charles H.—Homestead—April 29, 1915—Affirmed.
- McMinn, J. A., assignee—Soldiers' Additional—June 1, 1915—Affirmed.
- McNary, Alice M.—Homestead—October 11, 1915—Motion Modified.
- McPherson, Francis M.—Homestead—September 30, 1915—Affirmed.
- McPherson, Francis M.—Timber and Stone—November 23, 1915—Motion Denied.
- McPherson v. California—Selection—March 9, 1915—Affirmed.
- McPherson v. State of California—Selection—May 29, 1915—Instructions.
- McPhillamey, Margaret—Mineral—July 9, 1915—Reversed.
- McPhillamey, S. E., et al.—Mineral—July 9, 1915—Reversed.
- McRae, Kenneth—Homestead—July 2, 1915—Modified.
- McRay v. Northern Pacific Ry. Co.—Homestead—December 18, 1915—Affirmed.
- McReynolds, F. W., assignee—Soldiers' Additional—July 27, 1915—Affirmed.
- McReynolds, F. W., assignee—Soldiers' Additional—August 6, 1915—Affirmed.
- McReynolds, F. W., assignee—Soldiers' Additional—October 23, 1915—Motion Denied.
- McReynolds, F. W.—Soldiers' Additional—October 30, 1915—Motion Denied.
- McReynolds, F. W., assignee—Soldiers' Additional—November 5, 1915—Motion Denied.
- McReynolds, John E.—Homestead—September 30, 1915—Affirmed.
- McReynolds, John E.—Homestead—November 19, 1915—Motion Denied.
- McVay v. Northern Pacific Ry. Co.—Homestead—August 3, 1915—Affirmed.
- Meadows, M. A., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Mealey, Fred B.—Homestead—January 31, 1916—Affirmed.
- Mearle v. Berry—Homestead—July 10, 1915—Motion Denied.
- Meeks, Nathan V.—Homestead—June 17, 1915—Affirmed.
- Mehl, Gerhard—Homestead—January 20, 1916—Reversed.
- Meiklejohn et al. v. Hyde & Co.—Lieu Selection—July 8, 1915—Affirmed.
- Meiklejohn et al. v. Hyde & Co.—Lieu Selection—September 18, 1915—Motion Denied.
- Meiklejohn et al. v. Hyde & Co.—Forest Lieu Selection—October 29, 1915—Motion Allowed.
- Meloney, John A.—Homestead—October 23, 1915—Affirmed.
- Meng, Alexander—Homestead—February 19, 1916—Affirmed.
- Merell, Sam—Homestead—August 5, 1915—Affirmed.
- Merritt, Charles H.—Desert Land—February 19, 1916—Modified.
- Merritt, Florence R.—Desert Land—February 19, 1916—Modified.
- Mersfelder, Louis C.—Homestead—March 22, 1915—Remanded.
- Meserve, Richard E.—Homestead—February 12, 1916—Affirmed.
- Metz v. Donner—Homestead—June 8, 1915—Affirmed.
- Meyers, David C.—Homestead—March 31, 1915—Reversed.
- Michel, Gerhard F.—Homestead—March 31, 1915—Reversed.
- Michienzi v. Cheney—Homestead—December 7, 1915—Affirmed.
- Middaugh v. Northern Pacific Ry. Co.—Homestead—April 29, 1915—Motion Denied.
- Middleton, Mrs. Lulu B.—Desert Land—March 8, 1915—Affirmed.
- Midtbo, Herman N.—Isolated Tract—August 21, 1915—Affirmed.
- Midtbo, Herman N.—Cash Entry—January 15, 1916—Remanded.
- Mike, Tommy—Indian Allotment—April 29, 1915—Remanded.
- Milam, William A.—Homestead—June 19, 1915—Affirmed.
- Milam, William A.—Homestead—August 23, 1915—Remanded.
- Miles, Waldó P.—Homestead—September 3, 1915—Affirmed.
- Miles v. Housekeeper—Homestead—October 23, 1915—Affirmed.
- Miles v. Northern Pacific Ry. Co.—Homestead—January 4, 1916—Reversed.
- Miller, Frederick—Homestead—January 26, 1916—Vacated.
- Miller, John G.—Homestead—August 11, 1915—Affirmed.
- Miller, Myra, transferee—Selection—August 14, 1915—Remanded.
- Miller, Nellie—Mineral—February 19, 1916—Affirmed.
- Miller, Oliver W.—Homestead—December 21, 1915—Affirmed.
- Miller, Ruth M.—Soldiers' Additional—July 8, 1915—Affirmed.
- Miller, William H.—Homestead—March 16, 1915—Remanded.
- Miller, William W.—Report—November 3, 1915—Affirmed.
- Miller, William W.—Report—January 28, 1916—Motion Denied.
- Miller v. Adams—Isolated Tract—July 27, 1915—Affirmed.
- Miller v. Adams—Isolated Tract—September 24, 1915—Motion Denied.
- Millick v. Santa Fe Pacific Ry. Co.—Selection—January 31, 1916—Affirmed.

- Milligan, Rachel A.—Homestead—January 19, 1916—Modified.  
 Millikin, Thomas S.—Report—April 10, 1915—Affirmed.  
 Millinghausen, August—Desert Land—May 11, 1915—Affirmed.  
 Mills, Cella—Homestead—March 23, 1915—Motion Remanded.  
 Mills, John, Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.  
 Minnesota, State of—Selection—December 21, 1915—Letter to Geological Survey.  
 Mitchell, Anna S.—Homestead—May 10, 1915—Motion Denied.  
 Mitchell, Charles F., assignee—Soldiers' Additional—April 21, 1915—Affirmed.  
 Mitchell, Frank W.—Report—July 20, 1915—Petition Denied.  
 Mitchell v. Wickstrom—Homestead—February 19, 1916—Affirmed.  
 Mix, Abbie A.—Homestead—May 17, 1915—Affirmed.  
 Mix, Abbie A.—Homestead—October 25, 1915—Motion Denied.  
 Mix, Mary H.—Homestead—May 10, 1915—Reversed.  
 Mix, Mary H.—Homestead—July 23, 1915—Motion Denied.  
 Mizer, James A.—Homestead—June 23, 1915—Affirmed.  
 Moarle v. Berry—Homestead—November 15, 1915—Petition Denied.  
 Moarle v. Berry—Homestead—May 3, 1915—Motion Denied.  
 Mock, Alfred—Homestead—August 23, 1915—Modified.  
 Moe, Ole L., Moses, W. E., transferee—Homestead—March 6, 1915—Motion Remanded.  
 Moger v. Goff—Homestead—April 14, 1915—Affirmed.  
 Montague v. Youngstrom—Homestead—July 22, 1915—Affirmed.  
 Montague v. Youngstrom—Homestead—September 30, 1915—Motion Denied.  
 Montcalm, Gideon—Homestead—January 26, 1916—Remanded.  
 Montford, Frank—Homestead—July 27, 1915—Petition Denied.  
 Moore, Amanda E.—Report—April 29, 1915—Affirmed.  
 Moore, John B.—Homestead—October 4, 1915—Affirmed.  
 Moore, Walter—Homestead—September 3, 1915—Affirmed.  
 Moorman, Thomas J.—Homestead—August 6, 1915—Reversed.  
 Moreland, Archie M.—Homestead—July 27, 1915—Affirmed.  
 Moreland, Archie M.—Homestead—January 3, 1916—Motion Denied.  
 Moreland, Ray T.—Homestead—July 27, 1915—Affirmed.  
 Moreland, Ray T.—Homestead—September 27, 1915—Motion Denied.  
 Morgan, Leo K.—Homestead—July 22, 1915—Affirmed.  
 Morison v. Sapp—Homestead—August 5, 1915—Affirmed.  
 Morris, Albert A.—Timber and Stone—April 2, 1915—Motion Denied.  
 Morris, Arthur L.—Homestead—July 16, 1915—Modified.  
 Morris, Edith B.—Homestead—December 31, 1915—Affirmed.  
 Morris, Newton J.—Report—November 23, 1915—Affirmed.  
 Morris, Roy R.—Homestead—March 17, 1915—Affirmed.  
 Morris v. Bucklin—Homestead—January 31, 1916—Affirmed.  
 Morris v. Northern Pacific Ry. Co.—Homestead—June 7, 1915—Remanded.  
 Morrison, John A.—State Selection—February 19, 1916—Affirmed.  
 Morrison, John L.—Report—February 29, 1916—Affirmed.  
 Morrison v. Reboweitra—Homestead—May 18, 1915—Motion Denied.  
 Morrison v. Robinson—Homestead—August 13, 1915—Reversed.  
 Morse, J. B.—Reservoir—August 21, 1915—Vacated—Remanded.  
 Morse, W. B., *et al.*—Homestead—May 12, 1915—Instructions.  
 Mossholder *et al.* v. California *et al.*—Desert Land—June 23, 1915—Affirmed.  
 Moses, W. E., assignee—Soldiers' Additional—August 6, 1915—Petition Denied.  
 Mossman, Maud, *et al.*—Indian Allotment—August 4, 1915—Affirmed.  
 Mouritzen v. Bynon—Homestead—September 27, 1915—Reversed.  
 Moy, Gunhild—Homestead—January 20, 1916—Reversed.  
 Myers, James M.—Homestead—April 23, 1915—Affirmed.  
 Myers v. Garry—Desert Land—March 31, 1915—Certiorari Denied.  
 Muck, Alvin A.—Homestead—August 17, 1915—Petition Denied.  
 Muir v. Northern Pacific Ry. Co.—Homestead—September 24, 1915—Affirmed.  
 Muir v. Great Northern Ry. Co.—Homestead—November 19, 1915—Motion Denied.  
 Mulder, John E.—Desert Land—September 11, 1915—Affirmed.  
 Mullin, Elisha L.—Homestead—April 27, 1915—Remanded.  
 Mullis, Arthur—Homestead—March 31, 1915—Affirmed.  
 Mumma v. Gracey—Homestead—March 31, 1915—Affirmed.  
 Munzer, F. G., *et al.*—Mineral—February 19, 1916—Certiorari Granted.

- Murphy, Mary—Homestead—August 6, 1915—Affirmed.
- Murphy, Mary—Homestead—September 27, 1915—Motion Denied.
- Murphy and Sprinkle—Desert Land—March 19, 1915—Affirmed.
- Murphy, T. Waldo—Soldiers' Additional—July 22, 1915—Affirmed.
- Murphy v. Aaker—Homestead—April 30, 1915—Affirmed.
- Murphy v. Aaker—Homestead—June 23, 1915—Motion Denied.
- Murphy v. Clements—Homestead—June 29, 1915—Motion Denied.
- Murray, John, *et al.*—Mineral—March 13, 1915—Remanded.
- Musser, Edward S.—Homestead—April 21, 1915—Affirmed.
- Nabozny, C., H. P. Hulett, transferee—Homestead—March 6, 1915—Motion Remanded.
- Nabozny, C., H. P. Hulett, transferee—Homestead—December 2, 1915—Reversed.
- Nanik v. Casey—Homestead—January 20, 1916—Affirmed.
- Narston v. Wells—Homestead—March 3, 1915—Affirmed.
- Nash v. Joyce—Homestead—May 12, 1915—Motion Denied.
- Natalu Laverdure—Indian Allotment—February 16, 1916—Affirmed.
- Neal, Oscar F.—Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Neatherlin, Spiva L.—Homestead—March 17, 1915—Affirmed.
- Neely, Monsieur A.—Homestead—January 26, 1916—Affirmed.
- Neely v. Brown—Homestead—February 12, 1916—Affirmed.
- Negley, Benjamin F.—Report—November 3, 1915—Affirmed.
- Negley, Benjamin F.—Report—January 28, 1916—Motion Denied.
- Neiger v. Keyes, J. H.—Desert Land—September 11, 1915—Affirmed.
- Neiger v. Keyes, Olive—Desert Land—September 11, 1915—Affirmed.
- Neilson v. Travis—Homestead—March 3, 1915—Affirmed.
- Nelsen v. Christian—Homestead—April 27, 1915—Motion Denied.
- Nelson, Albert—Homestead—March 31, 1915—Remanded.
- Nelson, Corinne—Desert Land—July 31, 1915—Remanded.
- Nelson, J. B.—Homestead—September 22, 1915—Remanded.
- Nelson, Lena—Homestead—January 20, 1916—Reversed.
- Nelson, Michael—Desert Land—October 27, 1915—Affirmed.
- Nelson, Thomas R.—Petition—March 31, 1915—Affirmed.
- Nelson v. Holcomb—Desert Land—March 19, 1915—Motion Denied.
- Nelson v. McNamara—Homestead—September 14, 1915—Affirmed.
- Nelson v. Rehal—Homestead—April 14, 1915—Affirmed.
- Nelson v. Scott—Homestead—February 19, 1916—Affirmed.
- Neumann, Frank A.—Homestead—January 20, 1916—Reversed.
- Neumann, Frederick—Desert Land—July 2, 1915—Remanded.
- New Mexico, State of—Selection—June 28, 1915—Affirmed.
- New Mexico, State of—Selection—February 4, 1916—Affirmed.
- New Mexico, State of, v. Anderson—Coal—June 28, 1915—Affirmed.
- New Mexico, State of, v. Garrett—Homestead—August 14, 1915—Affirmed.
- Newell, Fred D.—Mineral—August 4, 1915—Affirmed.
- Newton, George W.—Homestead—March 8, 1915—Motion Denied.
- Newton, Marian A.—Timber and Stone—April 2, 1915—Motion Denied.
- Neylon v. Richardson—Homestead—February 29, 1916—Reversed.
- Nichols, Seraphin, Heirs of—Homestead—July 22, 1915—Remanded.
- Nielson, Christ G.—Report—April 27, 1915—Affirmed.
- Noel, William H.—Homestead—April 29, 1915—Affirmed.
- Noftsker v. Raberge—Homestead—April 27, 1915—Affirmed.
- Noleman, Julia—Desert Land—April 29, 1915—Affirmed.
- Noll, Jacob S.—Homestead—March 17, 1915—Affirmed.
- Nordrum, Clara—Homestead—May 3, 1915—Letter to Indian Office.
- Nordrum, Clara—Homestead—May 17, 1915—Vacated.
- Nordquist, Lars—Homestead—April 29, 1915—Affirmed.
- Nordquist, Nels—Homestead—April 29, 1915—Affirmed.
- Nordquist, Lars, v. Coe—Desert Land—June 17, 1915—Motion Denied.
- Nordquist, Nels, v. Coe—Desert Land—June 17, 1915—Motion Denied.
- North Yakima Irrigation Co.—Right of Way—May 11, 1915—Dismissed.
- Northern Improvement Co.—Coal—June 7, 1915—Affirmed.
- Northern Improvement Co.—Coal—October 12, 1915—Motion Denied.
- Northern Pacific Ry. Co. (3 cases)—Selection—March 9, 1915—Reversed.
- Northern Pacific Ry. Co.—Selection—March 17, 1915—Affirmed.
- Northern Pacific Ry. Co.—Survey—March 17, 1915—Closed.

- Northern Pacific Ry. Co.—Selection—March 19, 1915—Remanded.
- Northern Pacific Ry. Co.—Selection—April 17, 1915—Affirmed.
- Northern Pacific Ry. Co.—Selection—April 20, 1915—Modified.
- Northern Pacific Ry. Co.—Selection—April 26, 1915—Remanded.
- Northern Pacific Ry. Co.—Timber Tresspass—April 27, 1915—Petition Denied.
- Northern Pacific Ry. Co.—Selection—June 10, 1915—Petition Denied.
- Northern Pacific Ry. Co.—Selection—June 17, 1915—Affirmed.
- Northern Pacific Ry. Co.—Selection—June 19, 1915—Affirmed.
- Northern Pacific Ry. Co. (2 cases)—Selection—July 2, 1915—Affirmed.
- Northern Pacific Ry. Co.—Selection—July 26, 1915—Affirmed.
- Northern Pacific Ry. Co.—Selection—July 27, 1915—Reversed.
- Northern Pacific Ry. Co.—Selection—July 27, 1915—Affirmed.
- Northern Pacific Ry. Co.—Selection—August 13, 1915—Motion Denied.
- Northern Pacific Ry. Co. (2 cases)—Selection—October 26, 1915—Motion Denied.
- Northern Pacific Ry. Co.—Selection—October 28, 1915—Motion Denied.
- Northern Pacific Ry. Co.—Selection—December 14, 1915—Affirmed.
- Northern Pacific Ry. Co.—Selection—December 22, 1915—Affirmed.
- Northern Pacific Ry. Co. (5 cases)—Selection—December 31, 1915—Affirmed.
- Northern Pacific Ry. Co.—Selection—December 31, 1915—Motion Denied.
- Northern Pacific Ry. Co. (4 cases)—Selection—January 29, 1916—Affirmed.
- Northern Pacific Ry. Co.—Selection—January 29, 1916—Motion Denied.
- Northern Pacific Ry. Co. (5 cases)—Selection—February 18, 1916—Motion Denied.
- Northern Pacific Ry. Co. *v.* Adams—Selection—May 3, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Adams—Homestead—June 5, 1915—Motion Denied.
- Northern Pacific Ry. Co. *v.* Bearden—Selection—January 19, 1916—Affirmed.
- Northern Pacific Ry. Co. *v.* Carda—Homestead—November 19, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Crockett—Desert Land—March 17, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Dalton *et al.*—Homestead—June 25, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Danielson—Selection—June 19, 1915—Motion Denied.
- Northern Pacific Ry. Co. *v.* Davis—Selection—January 19, 1916—Motion Denied.
- Northern Pacific Ry. Co. *v.* Donaldson—Homestead—November 19, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Fisher—Homestead—November 19, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Frost—Homestead—November 5, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Hagenstein—Homestead—November 5, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Hayden—Homestead—December 21, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Hinckley—Homestead—November 5, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Hollam—Homestead—November 5, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* King—Homestead—November 30, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Krueger—Homestead—November 19, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Lyons—Homestead—May 11, 1915—Motion Allowed.
- Northern Pacific Ry. Co. *v.* Malcom *et al.*—Homestead—August 14, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Michaels—Homestead—November 19, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Miller—Selection—January 19, 1916—Affirmed.
- Northern Pacific Ry. Co. *v.* Stiles—Homestead—November 19, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Storm—Homestead—November 19, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Thompson—Homestead—October 30, 1915—Discharged.
- Northern Pacific Ry. Co. *v.* Trott—Homestead—November 5, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Upham—Homestead—April 27, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Washington—Selection—October 18, 1915—Affirmed.
- Northern Pacific Ry. Co. *v.* Washington, State of—Selection—December 17, 1915—Motion Denied.

- Northern Pacific Ry. Co. *v.* Young—Homestead—November 5, 1915—Affirmed.
- Norton, Clarence E.—Desert Land—August 2, 1915—Remanded.
- Norton, George N., Administrator—Desert Land—August 2, 1915—Remanded.
- Norton, Katie—Desert Land—August 2, 1915—Remanded.
- Norton, William P.—Coal—January 24, 1916—Affirmed.
- Nowell, F. D., Jr.—Coal—March 17, 1915—Affirmed.
- Nowell, T. S.—Coal—March 17, 1915—Affirmed.
- Nowell, Willis E.—Coal—March 17, 1915—Affirmed.
- Null, William S.—Homestead—November 24, 1915—Affirmed.
- Nulliner, Maggie, *et al.*—Desert Land—August 6, 1915—Reversed.
- Nulliner, Maggie, *et al.*—Homestead—November 1, 1915—Motion Denied.
- Nulliner, Maggie, *et al.*—Homestead—February 18, 1916—Petition Denied.
- Nutter *v.* Belgarde—Indian Allotment—January 28, 1916—Affirmed.
- Nutter *v.* Belgarde—Indian Allotment—January 31, 1916—Affirmed.
- Nutter *v.* Belgarde—Indian Allotment—February 18, 1916—Affirmed.
- Oakley, Oliver—Homestead—March 31, 1915—Remanded.
- Oakley, Oliver O.—Coal—April 22, 1915—Letter to General Land Office.
- O'Brien, Dennis, Heirs of—Homestead—July 23, 1915—Motion Allowed.
- O'Brien *v.* Southern Pacific Ry. Co.—Desert Land—April 14, 1915—Affirmed.
- O'Hara *v.* Massie—Homestead—July 22, 1915—Affirmed.
- O'Hara *v.* Massie—Homestead—October 23, 1915—Motion Denied.
- Ogg, Albert W.—Homestead—February 26, 1916—Affirmed.
- Okie, Clarice V.—Timber and Stone—December 31, 1915—Reversed.
- Oklahoma, State of—Tracts for Military Purposes—May 26, 1915.
- Oktabee, Franz—Homestead—August 5, 1915—Remanded.
- Olander *v.* Barron—Homestead—September 4, 1915—Affirmed.
- Olander *v.* Barron—Homestead—December 1, 1915—Motion Denied.
- Olding, John G.—Report—February 29, 1916—Affirmed.
- Oldland, Reuben, *et al.*—Mineral—May 14, 1915—Motion Denied.
- Oliver, Andrew J.—Homestead—January 26, 1916—Vacated.
- Oliver, Arthur H.—Desert Land—November 5, 1915—Remanded.
- Olk, George L.—Homestead—December 22, 1915—Affirmed.
- O'Neil, William T., assignee—Soldiers' Additional—April 20, 1915—Affirmed.
- Olson, Cornelius—Homestead—January 20, 1916—Reversed.
- Olson, G. A.—Whitaker, D. R., transferee—Homestead—March 6, 1915—Motion Remanded.
- Olson, James A. G.—Homestead—October 15, 1915—Affirmed.
- Olson, John, Moses, W. E., transferee—Homestead—March 6, 1915—Motion Remanded.
- Olson *v.* Painter—Homestead—August 4, 1915—Reversed.
- Olson *v.* Painter—Homestead—November 5, 1915—Motion Denied.
- Olson *v.* Sterns—Homestead—September 3, 1915—Petition Denied.
- Olson *v.* Sterns—Homestead—March 8, 1915—Motion Denied.
- Onstad *v.* Guy—Homestead—July 27, 1915—Petition Granted.
- Onstad *v.* Guy—Homestead—August 30, 1915—Affirmed.
- Onstad *v.* Guy—Homestead—November 13, 1915—Motion Denied.
- Oom Paul Consolidated Mining Co.—Mineral—July 23, 1915—Reversed.
- Oregon & California R. R. Co. *v.* Ritter—Mineral—July 23, 1915—Modified.
- Oregon & California R. R. Co. *v.* Ritter—Mineral—October 26, 1915—Motion Denied.
- Oregon, State of—Selection—May 17, 1915—Modified.
- Oregon, State of—Selection—May 27, 1915—Remanded.
- Oregon, State of—Selection—June 4, 1915—Reversed.
- Oregon, State of—Swamp—August 17, 1915—Reversed.
- Oregon, State of—Selection—September 11, 1915—Motion Allowed.
- Oregon, State of—Report—February 19, 1916—Affirmed.
- Oregon, State of, D. E. Aiken, transferee—Selection—July 15, 1915—Instructions.
- Oregon, State of, D. E. Aiken, transferee—State Selection—November 23, 1915—Petition Denied.
- Orr *v.* O'Brien—Homestead—August 21, 1915—Affirmed.
- Ortis, Roman—Homestead—August 6, 1915—Affirmed.
- Osborne, C. B., *et al.*—Coal—April 29, 1915—Affirmed.
- Ose *v.* State of Minnesota—Selection—March 27, 1915—Affirmed.
- Osgard, Martin—Homestead—November 10, 1915—Dismissed.

- Oslerich v. Northern Pacific Ry. Co.—  
Selection—July 15, 1915—Affirmed.
- Ostenfeldt, Charles L.—Report—June  
23, 1915—Affirmed.
- Ostle, Lulu A.—Desert Land—January  
24, 1916—Remanded.
- Otis, Harriet C.—Homestead—June  
19, 1915—Reversed.
- Otness, Hans S. C.—Homestead—Jan-  
uary 22, 1916—Reversed.
- Overholser, A. B.—Homestead—July  
2, 1915—Motion Remanded.
- Owen, Robert D.—Desert Land—De-  
cember 1, 1915—Affirmed.
- Oxborrow, Sherwood G.—Desert  
Land—May 15, 1915—Motion Re-  
manded.
- Oxford, Lydia—Homestead—April 27,  
1915—Affirmed.
- Oxford v. Cooley—Homestead—March  
31, 1915—Petition Denied.
- Oxford v. Heirs of Washburn—Desert  
Land—May 26, 1915—Motion De-  
nied.
- Ozbun, George W.—Homestead—De-  
cember 15, 1915—Affirmed.
- Pacific Coast Gypsum Manufacturing  
Co.—Mineral—June 30, 1915—Re-  
versed.
- Page, J. H., assignee—Soldiers' Addi-  
tional—August 6, 1915—Affirmed.
- Page, Percy L.—Homestead—Septem-  
ber 16, 1915—Affirmed.
- Pagel, Robert—Homestead—Novem-  
ber 11, 1915—Vacated.
- Paine, Caroline L.—Desert Land—  
March 6, 1915—Affirmed.
- Palmer, E. M.—Mineral—January 4,  
1916—Instructions.
- Palmer, Sarah—Soldiers' Additional—  
January 29, 1916—Motion Denied.
- Palmer v. Sims—Homestead—August  
4, 1915—Affirmed.
- Palmer v. Sims—Homestead—January  
13, 1916—Motion Granted.
- Palmquist, A. E., Dierks, Herbert,  
transferee—Homestead—March 6,  
1915—Motion Remanded.
- Panting, Delbert J.—Homestead—Feb-  
ruary 12, 1916—Affirmed.
- Panting, Russell M.—Homestead—  
January 31, 1916—Affirmed.
- Pardue v. State of New Mexico—  
Homestead—June 10, 1915—Motion  
Denied.
- Parker, M. M.—Survey—March 27,  
1915—Remanded.
- Parker v. Willamette Valley & Cas-  
cade Mountain Wagon Road Co.—  
Desert Land—July 28, 1915—Af-  
firmed.
- Parks v. Valenzuela—Homestead—  
November 11, 1915—Affirmed.
- Parks v. Valenzuela—Homestead—  
January 19, 1916—Motion Denied.
- Parmeter, A. M.—Whitaker, D. R.,  
transferee—Homestead—March 6,  
1915—Motion Remanded.
- Parrish, Frank D.—Homestead—  
March 23, 1915—Remanded.
- Patrick, Julius G.—Homestead—Sep-  
tember 7, 1915—Affirmed.
- Patrick v. Russell—Homestead—Au-  
gust 23, 1915—Affirmed.
- Patterson, George A.—Homestead—  
April 27, 1915—Affirmed.
- Patterson, Grover A.—Homestead—  
April 20, 1915—Affirmed.
- Patterson, H. Etta—Report—February  
29, 1916—Affirmed.
- Patterson, Mary V.—Desert Land—  
March 31, 1915—Affirmed.
- Patterson, Orin L.—Report—February  
29, 1916—Affirmed.
- Patterson, Richard—Report—Feb-  
ruary 29, 1916—Affirmed.
- Pattison v. Northern Pacific Ry. Co.—  
Homestead—March 18, 1915—Af-  
firmed.
- Pattison v. Hull—Homestead—Jan-  
uary 31, 1916—Affirmed.
- Patton v. Walker—Right of Way—Au-  
gust 6, 1915—Remanded.
- Patzer, August, Wiley, P. A., trans-  
feree—Homestead—March 6, 1915—  
Motion Remanded.
- Paul, Spurgeon E.—Homestead—  
March 25, 1915—Reversed.
- Paulson v. Northern Pacific Ry. Co.—  
Homestead—December 18, 1915—Af-  
firmed.
- Paulus, Ernest C.—Isolated Tract—  
April 21, 1915—Motion Denied.
- Paxson, D. T.—Homestead—June 19,  
1915—Petition Denied.
- Paxson v. Griffith—Homestead—Oc-  
tober 23, 1915—Reversed.
- Paxson v. Hagerman—Homestead—  
August 6, 1915—Petition Allowed.
- Paxson v. Hagerman—Homestead—  
November 23, 1915—Motion Allowed.
- Payne, George S.—Report—February  
29, 1916—Affirmed.
- Payne v. Shelt—Desert Land—March  
27, 1915—Affirmed.
- Peace, James W.—Homestead—May 4,  
1915—Remanded.
- Pearson, Carl A.—Homestead—July  
30, 1915—Letter to Reclamation  
Service.
- Pease, Levada M. G.—Homestead—  
September 18, 1915—Certiorari De-  
nied.
- Peck, Earl—Homestead—November  
24, 1915—Affirmed.
- Peck, Earl—Homestead—January 29,  
1916—Motion Denied.
- Peeler v. Leybold—Homestead—May  
15, 1915—Motion Denied.
- Peifer, John—Homestead—January  
15, 1916—Reversed.

- Peigev v. Paul—Indian Allotment—October 27, 1915—Affirmed.
- Pelger, Andrew—Homestead—October 23, 1915—Affirmed.
- Pelletier v. Cox (Eliza)—Desert Land—August 11, 1915—Affirmed.
- Pelletier v. Cox (Jabez)—Desert Land—August 11, 1915—Affirmed.
- Pemberton, Charles D.—Homestead—April 26, 1915—Motion Denied.
- Pemberton, Robert L.—Homestead—April 26, 1915—Motion Denied.
- Pena v. Montoya—Homestead—May 11, 1915—Remanded.
- Pence, Arthur S.—Homestead—September 3, 1915—Affirmed.
- Pendleton v. Oregon & California Ry. Co.—Homestead—February 19, 1916—Affirmed.
- Penikett, Herbert C.—Desert Land—February 29, 1916—Petition Granted.
- Penn Mining Co.—Mineral—June 19, 1915—Motion Denied.
- Penobscot Mining Co.—Mineral—December 31, 1915—Reversed.
- Pentz, Samuel S.—Homestead—May 15, 1915—Petition Denied.
- Peppenger v. Erickson—Homestead—December 15, 1915—Reversed.
- Peppenger v. Erickson—Homestead—January 29, 1916—Motion Denied.
- Perkins v. Eddy—Homestead—September 27, 1915—Affirmed.
- Perrine, Richard M.—Homestead—April 17, 1915—Affirmed.
- Perry, Milton M.—Homestead—March 22, 1915—Remanded.
- Peshia v. Delgarde—Indian Allotment—January 28, 1916—Affirmed.
- Peters, Isaak—Homestead—June 12, 1915—Letter to Reclamation Service.
- Peters, Isaak—Homestead—July 28, 1915—Affirmed.
- Peters, William A.—Lieu Selection—July 9, 1915—Reversed.
- Petersen, Aase—Homestead—July 23, 1915—Affirmed.
- Petersen, Charles J.—Homestead—April 27, 1915—Letter to Indian Office.
- Petersen, Charles J.—Homestead—May 12, 1915—Vacated.
- Petersen, Christian—Homestead—June 30, 1915—Affirmed.
- Peterson, Herman H.—Desert Land—March 31, 1915—Affirmed.
- Peterson v. Salmond—Homestead—October 23, 1915—Affirmed.
- Petri, Jacob—Desert Land—July 22, 1915—Affirmed.
- Pfeifle, Conrad—Homestead—February 16, 1916—Certiorari Denied.
- Phelps, Corydon W.—Homestead—November 30, 1915—Letter to Geological Survey.
- Phelps v. Jones—Homestead—May 22, 1915—Motion Denied.
- Phelps v. Olson (3 cases)—Homestead—September 7, 1915—Affirmed.
- Phelps v. Schroeder—Homestead—February 12, 1916—Affirmed.
- Philadelphia Mining & Milling Co.—Report—June 12, 1915—Petition Denied.
- Philbrick, Robert—Homestead—August 9, 1915—Reversed.
- Phillips, Elijah E.—Homestead—December 31, 1915—Affirmed.
- Phillips, Elijah E.—Homestead—February 12, 1916—Motion Denied.
- Phillips, Irby O.—Homestead—September 7, 1915—Affirmed.
- Pickens, John F.—Homestead—January 31, 1916—Affirmed.
- Pierce, J. D., *et al.*—Homestead—March 27, 1915—Motion Denied.
- Pierce, J. D., *et al.*—Report—September 14, 1915—Reversed.
- Pierce, Marian H.—Cash Entry—October 4, 1915—Affirmed.
- Pinckard, John S.—Homestead—November 15, 1915—Reversed.
- Pind v. State of Minnesota—Homestead—April 2, 1915—Affirmed.
- Pinner, Robert T.—Desert Land—March 8, 1915—Affirmed.
- Pitman, Enoch F.—Desert Land—November 1, 1915—Vacated.
- Pitman, Enoch F.—Homestead—January 5, 1916—Affirmed.
- Pitts v. Bruce—Homestead—August 11, 1915—Affirmed.
- Plantz, Leonard W.—Timber and Stone—April 27, 1915—Affirmed.
- Plenkner, Elenora E.—Desert Land—April 29, 1915—Remanded.
- Pollard, Joe B.—Homestead—September 14, 1915—Affirmed.
- Pollock v. Miles—Desert Land—February 7, 1916—Affirmed.
- Polly, Luther M.—Homestead—June 11, 1915—Remanded.
- Pompey's Pillar Townsite, Montana—Townsite—June 4, 1915—Amended.
- Porter v. Wigmore—Homestead—September 27, 1915—Affirmed.
- Poston, Henry F.—Homestead—April 8, 1915—Remanded.
- Potter, D. M.—Potter Reservoir—May 6, 1915—Remanded.
- Potter, Henry L.—Homestead—March 22, 1915—Remanded.
- Powell, Lucy—Homestead—April 17, 1915—Affirmed.
- Powers v. Day—Homestead—March 31, 1915—Affirmed.
- Prante, Charles D.—Homestead—December 31, 1915—Affirmed.
- Pratt v. Cosgrove—Homestead—July 23, 1915—Affirmed.

- Pratt v. Cosgrove—Homestead—September 14, 1915—Motion Denied.
- Pratt v. Cosgrove—Homestead—January 11, 1916—Dismissed.
- Prazinos v. Dobbins—Homestead—July 23, 1915—Affirmed.
- Presley, Willie J.—Homestead—September 14, 1915—Affirmed.
- Price, Charles G.—Homestead—December 31, 1915—Affirmed.
- Primeau, Theophile J.—Homestead—April 27, 1915—Letter to Indian Office.
- Primeau, Theophile J.—Homestead—May 12, 1915—Vacated.
- Prinzing v. Swope—Homestead—January 31, 1916—Affirmed.
- Pritchard v. Mealkins—Homestead—April 10, 1915—Affirmed.
- Proctor, Edgar W.—Homestead—October 23, 1915—Affirmed.
- Proctor v. Brown—Homestead—August 9, 1915—Affirmed.
- Proctor v. Brown—Homestead—September 14, 1915—Motion Denied.
- Provost, Peter, Dunton, W. B., transferee—Homestead—March 6, 1915—Motion Remanded.
- Pruett, Mrs. Jesse C.—Homestead—January 29, 1916—Affirmed.
- Prunty, Pinkard R., assignee—Soldiers' Additional—April 14, 1915—Affirmed.
- Pruyn, W. E., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Purdee, Armstrong, assignee—Soldiers' Additional—August 14, 1915—Motion Denied.
- Putner, Albert J.—Homestead—October 26, 1915—Affirmed.
- Qualley, Jul, v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Qualley, Knut, v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Queen Reservoir Co.—Right of Way—April 19, 1915—Affirmed.
- Quilling, Alfred—Homestead—January 22, 1916—Reversed.
- Quilmette v. Edmond—Homestead—March 17, 1915—Affirmed.
- Radey, John, et al.—Homestead—February 12, 1916—Motion Denied.
- Radey v. Cotton—Homestead—December 22, 1915—Affirmed.
- Ramera Oil Co. v. Simes—Mineral—May 17, 1915—Affirmed.
- Ramsey, Ralph A.—Homestead—September 22, 1915—Affirmed.
- Ramsey v. Lisbony—Homestead—December 7, 1915—Affirmed.
- Randolph, S. N., et al.—Coal Entry—March 27, 1915—Motion Denied.
- Randolph, S. N., et al.—Coal—June 29, 1915—Petition Denied.
- Randolph, S. N., et al.—Mineral—August 14, 1915—Motion Denied.
- Rankin, Jones & Moffat—Coal—June 30, 1915—Affirmed.
- Rankine, James—Homestead—February 2, 1916—Affirmed.
- Rausenberger, William A.—Isolated Tract—September 27, 1915—Affirmed.
- Rayman, Henry—Desert Land—June 30, 1915—Modified.
- Raymond, Charles W.—Desert Land—January 18, 1916—Reversed.
- Raymond, Lourena B.—Desert Land—May 29, 1915—Remanded.
- Raymond v. Riester—Mineral—June 19, 1915—Motion Denied.
- Reaves, Algernon S.—Desert Land—July 28, 1915—Affirmed.
- Reaves, Winslow H.—Desert Land—July 28, 1915—Affirmed.
- Reble v. Northern Pacific Ry. Co.—Selection—December 21, 1915—Affirmed.
- Reeb v. Grigsby—Desert Land—August 9, 1915—Modified.
- Reed, Margaret C.—Town Site—August 27, 1915—Affirmed.
- Reed, Margaret C.—Timber and Stone—November 23, 1915—Motion Denied.
- Reedy, Henry W.—Homestead—June 19, 1915—Affirmed.
- Reese, Hyrum T.—Homestead—July 20, 1915—Remanded.
- Reese, John L.—Cash Entry—November 30, 1915—Affirmed.
- Reeves v. Lambert—Homestead—August 6, 1915—Affirmed.
- Reeves v. Lambert—Homestead—November 3, 1915—Motion Denied.
- Reimers, John M.—Desert Land—June 17, 1915—Affirmed.
- Reiquam, Alvin O.—Homestead—January 22, 1916—Reversed.
- Reiquam, Christopher O.—Homestead—January 20, 1916—Reversed.
- Reiquam, Oline O.—Homestead—January 20, 1916—Reversed.
- Reit v. Gates—Homestead—April 26, 1915—Affirmed.
- Rene et al. v. Birch Creek Irrigation Co.—Right of Way—May 6, 1915—Affirmed.
- Rensink v. Lowe—Homestead—August 21, 1915—Affirmed.
- Resan v. Tapper—Homestead—March 27, 1915—Affirmed.
- Resan v. Tapper—Homestead—May 17, 1915—Motion Denied.
- Resson, Magnus—Homestead—August 5, 1915—Affirmed.

- Reutz, Calvin G.—Homestead—January 20, 1916—Reversed.
- Reynolds, Albin—Homestead—August 14, 1915—Affirmed.
- Reynolds, Azle—Homestead—August 9, 1915—Affirmed.
- Reynolds, Ernest H.—Desert Land—October 4, 1915—Affirmed.
- Reynolds, Nathaniel A.—Homestead—July 30, 1915—Remanded.
- Rhoades, Harry O.—Homestead—June 29, 1915—Affirmed.
- Rhode, George—Isolated Tract—December 13, 1915—Affirmed.
- Rhodes, Jane, widow—Homestead—July 27, 1915—Reversed.
- Rhodes, Lester—Homestead—March 9, 1915—Affirmed.
- Riach, James C.—Report—February 16, 1916—Affirmed.
- Rice, Alonzo C. (2 cases)—Selection—August 21, 1915—Modified.
- Rice, Eugene T.—Desert Land—August 4, 1915—Affirmed.
- Rice, Houston—Homestead—June 10, 1915—Reversed.
- Rice, Sada N.—Homestead—January 4, 1916—Reversed.
- Rice v. Cooksey—Homestead—March 31, 1915—Affirmed.
- Rice v. Cooksey—Homestead—June 8, 1915—Motion Denied.
- Rice v. Lyman—Homestead—August 6, 1915—Affirmed.
- Ricedorff v. Frederickson—Homestead—October 7, 1915—Affirmed.
- Rich Bar Mining Co. v. Gensey—Homestead—July 10, 1915—Motion Remanded.
- Richards, Elmer D.—Soldiers' Additional—July 2, 1915—Affirmed.
- Richardson, Clifford—Homestead—June 19, 1915—Affirmed.
- Richardson v. Richardson—Homestead—August 13, 1915—Reversed.
- Richardson v. Sligh—Desert Land—September 4, 1915—Affirmed.
- Ricketts, William P.—Lieu Selection—September 14, 1915—Affirmed.
- Rickki, Henry—Desert Land—April 23, 1915—Reversed.
- Ricks, James B.—Desert Land—October 30, 1915—Affirmed.
- Ricks, James B.—Desert Land—January 26, 1916—Petition Granted.
- Rider, Kathryn C.—Desert Land—March 31, 1915—Affirmed.
- Riegel, Elmer E., assignee—Soldiers' Additional—April 29, 1915—Affirmed.
- Riegel, E. E., assignee—Soldiers' Additional—June 1, 1915—Motion Denied.
- Rife, Edward H.—Soldiers' Additional—July 23, 1915—Motion Denied.
- Riggs v. Sein—Homestead—January 26, 1916—Affirmed.
- Rilcoff, Nicholas J.—Homestead—February 19, 1916—Affirmed.
- Ringer v. Nerbovig—Timber and Stone—January 31, 1916—Affirmed.
- Rink, Emil C.—Homestead—June 5, 1915—Petition Denied.
- Ritter, Emanuel—Homestead—October 15, 1915—Modified.
- Ritzinger v. Northern Pacific Ry. Co.—Homestead—March 9, 1915—Affirmed.
- Robb v. Jarrard—Homestead—July 23, 1915—Affirmed.
- Robb v. Jarrard—Homestead—September 14, 1915—Motion Denied.
- Robbins v. Elliott—Desert Land—March 13, 1915—Returned.
- Robe, Lucien S.—Survey—April 20, 1915—Affirmed.
- Roberts, Guy W.—Homestead—September 27, 1915—Affirmed.
- Robinett, Joseph—Homestead—July 23, 1915—Affirmed.
- Robinson, Robert E.—Homestead—December 17, 1915—Affirmed.
- Robinson, A. N., v. Northern Pacific Ry. Co.—Selection—May 21, 1915—Certiorari Allowed.
- Robinson, Alvin, v. Northern Pacific Ry. Co.—Selection—May 21, 1915—Certiorari Allowed.
- Robinson v. Central Pacific Ry. Co.—Selection—April 29, 1915—Affirmed.
- Robison, Henry D.—Homestead—January 22, 1916—Reversed.
- Robison, Lizzie M.—Desert Land—June 30, 1915—Remanded.
- Rochr, Charles A.—Homestead—April 29, 1915—Affirmed.
- Rochr, Otto H.—Homestead—April 21, 1915—Affirmed.
- Rockwell, May C.—April 21, 1915—Letter to Geological Survey.
- Rockwell, May C.—Homestead—May 12, 1915—Reversed.
- Roose v. Austin—Homestead—January 26, 1916—Reversed.
- Rogers, Benjamin F.—Homestead—August 21, 1915—Motion Denied.
- Rogers, F. E., assignee—Soldiers' Additional—December 15, 1915—Motion Denied.
- Rogers, F. E.—assignee—Soldiers' Additional—July 29, 1915—Affirmed.
- Rogers, Irving H.—Desert Land—December 24, 1915—Modified.
- Rogers, Sylvester D.—Homestead—January 31, 1916—Affirmed.
- Rogers v. Southern Pacific Ry. Co.—Desert Land—August 5, 1915—Affirmed.
- Rohde, Peter C.—Homestead—December 31, 1915—Reversed.

- Rohde v. Miller—Desert Land—January 31, 1916—Reversed.
- Rold v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Rolow, John F.—Homestead—October 25, 1915—Reversed.
- Rolsdorph, Marius—Homestead—January 20, 1916—Reversed.
- Rombach v. Snow—Homestead—June 12, 1915—Affirmed.
- Rombeck v. Stephens—Homestead—July 27, 1915—Affirmed.
- Romek, Toney—Homestead—January 31, 1916—Reversed.
- Romer, L. J., assignee—Soldiers' Additional—July 27, 1915—Motion Allowed.
- Romtverdt, Herman K.—Homestead—June 19, 1915—Affirmed.
- Ronning v. Sage—Homestead—May 29, 1915—Affirmed.
- Rose, Anna R.—Homestead—November 11, 1915—Instructions.
- Ross, Bettie—Homestead—August 11, 1915—Reversed.
- Ross, Maud—Desert Land—October 15, 1915—Affirmed.
- Ross, Maud—Desert Land—November 23, 1915—Motion Denied.
- Ross v. Gray—Homestead—April 17, 1915—Reversed.
- Roth, Carl—Homestead—January 24, 1916—Affirmed.
- Rotter, Vincent—Report—January 31, 1916—Affirmed.
- Roubidoux, Louis (for minor child) (2 cases)—Indian Allotment—February 16, 1916—Affirmed.
- Roubidoux, Hannah (for her minor child)—Indian Allotment—February 16, 1916—Affirmed.
- Roubidoux, Louis, *et al.*—Indian Allotment—January 31, 1916—Affirmed.
- Rountree, Rufus V.—Homestead—October 7, 1915—Affirmed.
- Roy, Jane G.—Timber and Stone—April 2, 1915—Motion Denied.
- Ruder *et al.* v. Ray *et al.*—Homestead—March 22, 1915—Affirmed.
- Rumenap, Charles, v. Northern Pacific Ry. Co.—Homestead—March 17, 1915—Affirmed.
- Rumenap, Herbert, v. Northern Pacific Ry. Co.—Homestead—March 17, 1915—Affirmed.
- Rupp, Earl M.—Homestead—April 24, 1915—Instructions.
- Rupp, Earl M.—Homestead—July 26, 1915—Instructions.
- Russell, Robert A.—Homestead—April 21, 1915—Letter to Geological Survey.
- Russell, Robert A.—Homestead—May 12, 1915—Reversed.
- Rust, Wilson D.—Desert Land—October 29, 1915—Affirmed.
- Rustad, John—Homestead—February 29, 1916—Affirmed.
- Ryan, Catherine C.—Homestead—August 11, 1915—Affirmed.
- Ryden v. Wilson—Desert Land—February 12, 1916—Affirmed.
- Ryerson, Mildred I.—Desert Land—March 27, 1915—Affirmed.
- Sabo v. Person—Homestead—September 8, 1915—Affirmed.
- Sais, Manuel—Homestead—September 22, 1915—Remanded.
- Safford, Mercy E.—Homestead—March 27, 1915—Reversed.
- Sage, Edwin J.—Homestead—January 31, 1916—Affirmed.
- Sahlman v. Sale—Homestead—April 8, 1915—Reversed.
- Saling, A. W., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Salisbury v. Price & Dudley—Desert Land—April 27, 1915—Affirmed.
- Salysers, Willie A.—Homestead—August 4, 1915—Affirmed.
- Salysers, Willie A.—Homestead—December 31, 1915—Motion Denied.
- Sams *et al.* v. Collins—Lieu Selection—March 31, 1915—Affirmed.
- San Francisco, City and County of—Reservoir—October 11, 1915—Modified.
- San Luis Valley Oil & Gas Co.—Mineral—May 20, 1915—Motion Denied.
- Sanchez, Fred—Homestead—June 28, 1915—Remanded.
- Sandeney, Margaret (for Ben Sandeney)—Indian Allotment—June 12, 1915—Affirmed.
- Sanford, Granville A.—Desert Land—March 31, 1915—Remanded.
- Santa Fe Pacific R. R. Co.—Selection—March 27, 1915—Reversed.
- Santa Fe Pacific R. R. Co.—Selection—April 14, 1915—Motion Modified.
- Santa Fe Pacific R. R. Co. (2 cases)—Selection—May 22, 1915—Remanded.
- Santa Fe Pacific R. R. Co. (2 cases)—Selection—May 27, 1915—Remanded.
- Santa Fe Pacific R. R. Co.—Lieu Selection—May 27, 1915—Remanded.
- Santa Fe Pacific R. R. Co.—Selection—June 28, 1915—Instructions.
- Santa Fe Pacific R. R. Co. *et al.* (2 cases)—Selection—June 29, 1915—Reversed.
- Santa Fe Pacific R. R. Co.—Selection—July 8, 1915—Affirmed.
- Santa Fe Pacific R. R. Co.—Selection—July 8, 1915—Approved.
- Santa Fe Pacific R. R. Co. (2 cases)—Selection—July 23, 1915—Approved.
- Santa Fe Pacific R. R. Co.—Forest Lieu Selection—August 6, 1915—Affirmed.

- Santa Fe Pacific R. R. Co.—Selection—August 13, 1915—Case Returned.
- Santa Fe Pacific R. R. Co.—Lieu Selection—September 7, 1915—Motion Denied.
- Santa Fe Pacific R. R. Co.—Selection—October 15, 1915—Vacated and Remanded.
- Santa Fe Pacific R. R. Co.—Forest Lieu Selection—October 22, 1915—Reversed.
- Santa Fe Pacific R. R. Co. (2 cases)—Selection—October 23, 1915—Approved.
- Santa Fe Pacific R. R. Co., Newton H. vember 11, 1915—Vacated.
- Sargent, James B.—Homestead—August 21, 1915—Motion Denied.
- Sauter v. Osterich—Homestead—November 23, 1915—Affirmed.
- Savage v. Bruce—Indian Allotment—January 31, 1916—Affirmed.
- Savage v. Gould *et al.*—Homestead—September 4, 1915—Affirmed.
- Savage v. Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Saval, John, assignee—Soldiers' Additional—February 29, 1916—Affirmed.
- Schafer, Rosa—Indian Allotment—January 4, 1916—Affirmed.
- Schafer, William—Desert Land—April 29, 1915—Vacated.
- Schandelmeier, Charles—Desert Land—April 27, 1915—Affirmed.
- Scheil v. Sherman—Homestead—February 26, 1916—Affirmed.
- Scherer, Lydia—Homestead—June 12, 1915—Letter to Reclamation Service.
- Scherer, Lydia—Homestead—September 3, 1915—Affirmed.
- Scherer v. Risinger—Homestead—March 31, 1915—Affirmed.
- Schermerhorn, Paul N.—Homestead—January 20, 1916—Reversed.
- Schlery, James F.—Homestead—January 31, 1916—Affirmed.
- Schloeff, Louis J.—Homestead—June 29, 1915—Affirmed.
- Schmidt, Henry P.—Homestead—June 12, 1915—Letter to Reclamation Service.
- Schmidt, Henry P.—Homestead—September 3, 1915—Affirmed.
- Schneider, Ferdinand L.—Homestead—April 20, 1915—Affirmed.
- Schneider v. State of Idaho—Homestead—August 9, 1915—Motion Sustained.
- Schoenwald v. Johnson—Homestead—July 27, 1915—Affirmed.
- Schoenwald v. Vance—Desert Land—September 16, 1915—Affirmed.
- Schrag, P. James—Homestead—June 12, 1915—Letter to Reclamation Service.
- Schrag, P. James—Homestead—September 3, 1915—Affirmed.
- Schreiber, Elizabeth—Homestead—May 17, 1915—Modified.
- Schubert v. Girardet—Desert Land—February 7, 1916—Reversed.
- Schubert v. Heirs of L. E. Nulph—Homestead—April 29, 1915—Affirmed.
- Schulerud, Carl L.—Homestead—August 14, 1915—Affirmed.
- Schultz, Adolph W.—Homestead—January 20, 1916—Reversed.
- Schulz, Albert, Whitaker, D. R., transferee—Homestead—March 6, 1915—Motion Remanded.
- Schwartz, Amelia, for Helen—Indian Allotment—January 31, 1916—Affirmed.
- Schwartz, Amelia, for Katherine—Indian Allotment—January 31, 1916—Affirmed.
- Scott, Adjar K.—Homestead—February 16, 1916—Affirmed.
- Scott, Mabel E., Heirs of—Desert Land—December 24, 1915—Affirmed.
- Scott, Mollie J.—Report—February 12, 1916—Affirmed.
- Scrivner, M. B.—Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Scrivner, W. P., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Searle, Oscar A.—Homestead—January 26, 1916—Vacated.
- Sears, Charles W.—Homestead—January 22, 1916—Reversed.
- Sears, J. Marion—Homestead—July 26, 1915—Letter to Reclamation Service.
- Sears, J. Marion—Homestead—December 17, 1915—Remanded.
- See v. Heirs of Burnside—Homestead—August 26, 1915—Affirmed.
- Seeger, William, Whitaker, D. R., transferee—Homestead—March 6, 1915—Motion Remanded.
- Seifried, Minnie—Homestead—April 6, 1915—Reversed.
- Selmen v. Stum—Homestead—June 11, 1915—Affirmed.
- Selman v. Stum—Homestead—August 9, 1915—Motion Denied.
- Sens v. Paul *et al.*—Indian Allotment—January 31, 1916—Affirmed.
- Serna, Jesus—Homestead—August 6, 1915—Affirmed.
- Shafer, Oscar—Desert Land—July 27, 1915—Modified and Remanded.
- Shaneyfelt, Charles H.—Homestead—April 23, 1915—Affirmed.
- Shanks, William L., assignee—Soldiers' Additional—September 27, 1915—Affirmed.
- Shannon, Cornelia B. L.—Homestead—August 9, 1915—Affirmed.

- Sharp, Frank T.—Desert Land—December 13, 1915—Affirmed.
- Sharp, Mergret E.—Homestead—June 19, 1915—Affirmed.
- Sharp, Ruth—Homestead—April 29, 1915—Affirmed.
- Sharp, Sam—Homestead—November 10, 1915—Reversed.
- Sharp v. St. Paul, Minneapolis & Manitoba R. R. Co.—Homestead—July 31, 1915—Affirmed.
- Sheffield v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Sheldon, Horace H., assignee—Soldiers' Additional—August 6, 1915—Affirmed.
- Shelver v. McMurtrie—Desert Land—March 17, 1915—Motion Denied.
- Shepherd v. McKay—Homestead—August 6, 1915—Affirmed.
- Sherman, Fred—Homestead—September 3, 1915—Affirmed.
- Sherman, J. Charles—Desert Land—March 3, 1915—Reversed.
- Sherman, John—Homestead—February 25, 1916—Remanded.
- Shields v. Bishop *et al.*—Homestead—November 11, 1915—Affirmed.
- Shirley, Florence—April 12, 1915—Letter to Geological Survey.
- Shirley, Florence—Homestead—May 6, 1915—Letter to Geological Survey.
- Shirley, Florence—Homestead—May 26, 1915—Remanded.
- Shively, Arley A.—Homestead—August 4, 1915—Reversed.
- Short, Thomas H.—Homestead—February 14, 1916—Reversed.
- Shorthill, Terese V.—Homestead—January 20, 1916—Reversed.
- Shrove v. Weiss—Homestead—May 15, 1915—Affirmed.
- Schultz v. Rodseth—Homestead—February 4, 1916—Certiorari Denied.
- Shutts, N. N.—Homestead—June 17, 1915—Affirmed.
- Sigtrig v. Northern Pacific Ry. Co.—Homestead—August 11, 1915—Affirmed.
- Sigtrig v. Northern Pacific Ry. Co.—Homestead—October 7, 1915—Motion Denied.
- Silkworth v. Northern Pacific Ry. Co.—Homestead—March 22, 1915—Affirmed.
- Silver Fissure Mining Co.—Mineral—May 15, 1915—Reversed.
- Silverman v. Northern Pacific Ry. Co.—Selection—April 23, 1915—Modified.
- Simkins, Martha S.—Homestead—July 2, 1915—Dismissed.
- Simmons, Goodridge K.—Homestead—July 29, 1915—Affirmed.
- Simpson, Edith M.—Homestead—August 21, 1915—Affirmed.
- Simpson, Emma—Homestead—May 22, 1915—Remanded.
- Simpson, Emma S., *et al.*—Indian Allotment—November 17, 1915—Affirmed.
- Simpson, Sallie C.—Homestead—November 23, 1915—Affirmed.
- Simpson, Sampson S.—Homestead—July 29, 1915—Affirmed.
- Sims, Moye H.—Homestead—September 3, 1915—Affirmed.
- Sioux City & Rock Springs Mining Co. *et al.*—Lieu Selection—July 28, 1915—Modified.
- Skagit Lime & Cement Co. v. Peavey—Mineral—July 9, 1915—Affirmed.
- Skarsten v. Laducer—Indian Allotment—January 28, 1916—Affirmed.
- Skarsten v. Lafontain—Indian Allotment—January 28, 1916—Affirmed.
- Skinner, Jesse—Homestead—July 28, 1915—Remanded.
- Skinner, Roy G.—Homestead—April 22, 1915—Affirmed.
- Slattery v. Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Slattery, Patrick, Shellenberger, P. H., transferee—Homestead—March 6, 1915—Motion Remanded.
- Sletten, Carl O.—Homestead—May 17, 1915—Modified.
- Slick v. Steadman—Homestead—August 13, 1915—Motion Denied.
- Sloan, F. A., administratrix—Report—March 31, 1915—Affirmed.
- Slocum, S. A., *et al.*—Homestead—January 18, 1916—Affirmed.
- Slotten, Carl O.—Homestead—August 13, 1915—Modified.
- Slentz v. Taylor—Homestead—February 7, 1916—Affirmed.
- Small v. Northern Pacific Ry. Co.—Homestead—December 18, 1915—Affirmed.
- Smiley v. Jenkins—Homestead—July 27, 1915—Affirmed.
- Smith, Ambrose H.—Report—April 29, 1915—Affirmed.
- Smith, Augustus G.—Homestead—September 3, 1915—Affirmed.
- Smith, Charles A.—Isolated Tract—November 5, 1915—Motion Denied.
- Smith, Daisie B.—Homestead—September 30, 1915—Affirmed.
- Smith, Daisie B.—Homestead—November 19, 1915—Motion Denied.
- Smith, Fannie—Desert Land—March 31, 1915—Affirmed.
- Smith, George A., Davis Coal Co., transferee—Timber and Stone—April 2, 1915—Motion Denied.
- Smith, Harry E.—Homestead—March 23, 1915—Remanded.
- Smith, James A.—Mineral—September 3, 1915—Affirmed.

- Smith, James A.—Mineral—November 23, 1915—Motion Denied.
- Smith, J. Kilrain—Homestead—September 14, 1915—Affirmed.
- Smith, Leonard—Homestead—July 27, 1915—Vacated and Remanded.
- Smith, Nellie M.—Homestead—January 22, 1916—Reversed.
- Smith Reservoir—Right of Way—May 29, 1915—Affirmed.
- Smith, Sarah J.—Homestead—June 12, 1915—Affirmed.
- Smith, Sarah J.—Homestead—July 28, 1915—Motion Denied.
- Smith, Sarah T.—Homestead—July 27, 1915—Affirmed.
- Smith, William E.—Timber and Stone—April 27, 1915—Affirmed.
- Smith, William J.—Homestead—June 11, 1915—Remanded.
- Smith v. Brown—Soldiers' Addition—January 18, 1916—Affirmed.
- Smith v. Guice—Desert Land—March 31, 1915—Affirmed.
- Smith v. Guice—Desert Land—July 23, 1915—Motion Denied.
- Smith v. Guice—Desert Land—September 3, 1915—Petition Denied.
- Smith v. Heirs of Lomason—Homestead—September 27, 1915—Affirmed.
- Smith v. Northern Pacific Ry. Co.—Homestead—August 23, 1915—Modified.
- Smith v. Tisdale *et al.*—Homestead—June 26, 1915—Affirmed.
- Smith v. Tisdale *et al.*—Homestead—September 3, 1915—Motion Denied.
- Smith *et al.* v. Vorce—Homestead—December 17, 1915—Affirmed.
- Smook, Theodore—Desert Land—July 29, 1915—Remanded.
- Snoddy v. Lajeunesse—Timber and Stone—August 6, 1915—Affirmed.
- Snodgrass, Robert L.—Homestead—July 31, 1915—Affirmed.
- Snow, John—Desert Land—July 26, 1915—Affirmed.
- Snyder *et al.* v. Remer—Homestead—January 4, 1916—Dismissed.
- Soambler, George—Report—August 30, 1915—Petition Denied.
- Solberg, Charley, Field Bohart, transferee—Homestead—March 6, 1915—Motion Remanded.
- Sommer, John—Homestead—April 27, 1915—Affirmed.
- Somerville *et al.* v. Defiance Coal Co.—Mineral—July 28, 1915—Affirmed.
- Somerville *et al.* v. Defiance Coal Co.—Mineral—December 13, 1915—Motion Denied.
- Sonner Reservoir—Right of Way—May 6, 1915—Affirmed.
- Soo Reservoir, E. C. Richmond *et al.*—Reservoir—February 26, 1916—Motion Remanded.
- South Dakota, State of—Selection—May 26, 1915—Affirmed.
- South Dakota, State of—Lieu Selection—September 4, 1915—Reversed.
- Sowder v. Malone—Homestead—November 15, 1915—Reversed.
- Spaker v. Woodhouse—Desert Land—February 4, 1916—Affirmed.
- Sparling, George N., *et al.*—Coal—September 22, 1915—Remanded.
- Speer, Daisy G.—Desert Land—August 26, 1915—Reversed.
- Speer, Robinson E., *et al.*—Mineral—January 31, 1916—Affirmed.
- Speight v. Jarrett—Timber and Stone—April 27, 1915—Affirmed.
- Speight v. Jarrett—Timber and Stone—June 23, 1915—Motion Denied.
- Speiser, Henry—Homestead—January 31, 1916—Affirmed.
- Spencer, A. F., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Spencer, Gilbert C.—Homestead—March 9, 1915—Remanded.
- Spencer, Kate, C. H. Buffington, assignee—Homestead—July 27, 1915—Affirmed.
- Spencer, Kate, R. Lang, assignee—Homestead—July 27, 1915—Affirmed.
- Spencer, S. W., Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Spencer v. Carter—Desert Land—January 24, 1916—Affirmed.
- Sperry, M. M., Yankee Fuel Co.—Homestead—March 27, 1915—Affirmed.
- Spiker, J. M.—Survey—November 30, 1915—Petition Denied.
- Spivy, William A.—Homestead—April 27, 1915—Remanded.
- Spotts, Charles A.—Homestead—March 9, 1915—Remanded.
- Spracklin, George A.—Homestead—May 6, 1915—Affirmed.
- Sprague, Jesse E.—Homestead—April 14, 1915—Vacated.
- Spriggs, Thomas M.—Homestead—October 22, 1915—Reversed.
- Sprinkle, Carrie F.—Homestead—August 14, 1915—Affirmed.
- St. Arnaud, Alexander—Allotment—March 25, 1915—Letter to Indian Office.
- St. Arnaud, Alexander—Indian Allotment—May 11, 1915—Affirmed.
- Standford, Edward A.—Desert Land—January 18, 1916—Affirmed.
- Standish Water Co.—Right of Way—June 5, 1915—Reversed.
- Stanfield, Clyde L.—Homestead—November 5, 1915—Reversed.
- Stanfield, William F.—Homestead—November 5, 1915—Reversed.
- Stanfield, William T.—Homestead—September 14, 1915—Reversed.

- Stanley, John, *et al.*—Desert Land—November 3, 1915—Modified.
- Stanton, John M., assignee—Soldiers' Additional—April 14, 1915—Affirmed.
- Starbuck, Oliver P. M.—Homestead—March 17, 1915—Affirmed.
- Stark, C. G., D. R. Whitaker, transferee—Homestead—March 6, 1915—Motion Remanded.
- Stathem *v.* Tombs—Homestead—December 1, 1915—Affirmed.
- Stecher *v.* Thirkell—Homestead—December 2, 1915—Affirmed.
- Steele, Stephen P.—Homestead—April 21, 1915—Vacated.
- Steffanski, Albert—Right of Way—August 9, 1915—Remanded.
- Steinfeld, Albert—Mineral—November 17, 1915—Affirmed.
- Stell, W. D., J. T. Green—Warrant—September 14, 1915—Reversed.
- Stensland *v.* Stearns—Homestead—August 14, 1915—Affirmed.
- Stensland *v.* Stearns—Homestead—October 27, 1915—Motion Denied.
- Stephens, T. B., *et al.*—Homestead—May 17, 1915—Motion Allowed.
- Stephenson, William M.—Desert Land—April 12, 1915—Affirmed.
- Stevens, E. C., M. L. Walker, transferee—Homestead—March 6, 1915—Motion Remanded.
- Stiehl, Myrtle R.—Homestead—March 23, 1915—Letter to Geological Survey.
- Stiehl, Myrtle R.—Homestead—May 15, 1915—Motion Remanded.
- Stiles *v.* Long—Desert Land—October 23, 1915—Affirmed.
- Stillman, Dorothea V.—March 27, 1915—Letter to Indian Office.
- Stitt, James A.—Desert Land—April 21, 1915—Affirmed.
- Stitt, Lucy L.—Homestead—June 25, 1915—Letter to Reclamation Service.
- Stitt, Lucy L.—Homestead—July 10, 1915—Remanded.
- Stitt, Ruth B.—Homestead—November 23, 1915—Affirmed.
- Stitzel *v.* Perkins—Homestead—June 23, 1915—Affirmed.
- Stockley, Thomas J.—Homestead—July 9, 1915—Modified.
- Stockwell, Lucius A.—Desert Land—May 11, 1915—Affirmed.
- Stockwell, Mary M.—Desert Land—May 11, 1915—Affirmed.
- Stoddard, Joseph D.—Homestead—June 17, 1915—Reversed.
- Stokes, George H., Joseph Sturgeon, transferee—Homestead—November 18, 1915—Modified.
- Stone *v.* Clark—Homestead—November 11, 1915—Affirmed.
- Stonehocker, Simon—Homestead—April 29, 1915—Affirmed.
- Storey, Mounts—Homestead—January 31, 1916—Affirmed.
- Storm, John A.—Homestead—September 27, 1915—Remanded.
- Story, George P.—Timber and Stone—April 27, 1915—Affirmed.
- Story, William H.—Homestead—January 22, 1916—Reversed.
- Strait, William F.—Homestead—April 20, 1915—Reversed.
- Strang *v.* Beeman—Homestead—February 12, 1916—Affirmed.
- Stratton, Percy—Homestead—April 29, 1915—Motion Sustained.
- Strayer, William H.—Homestead—April 10, 1915—Remanded.
- Strom, Emanuel—Report—February 29, 1916—Affirmed.
- Strong, Erma B., assignee—Desert Land—December 15, 1915—Petition Denied.
- Stubbs, James, assignee—Soldiers' Additional—March 31, 1915—Affirmed.
- Stubbs, James, assignee—Soldiers' Additional—June 1, 1915—Motion Denied.
- Stumme, William C.—Homestead—January 5, 1916—Reversed.
- Stuper *v.* Marlow's Heirs—Homestead—November 3, 1915—Motion Denied.
- Sturgis, Frank E., Heirs of—Soldiers' Homestead—July 8, 1915—Affirmed.
- Stutman *v.* Ray *et al.*—Homestead—August 6, 1915—Modified.
- Sullenberger, Alex T., assignee—Soldiers' Additional—November 13, 1915—Affirmed.
- Sullivan *v.* Dorris—Homestead—December 13, 1915—Affirmed.
- Sullivan *v.* Northern Pacific Ry. Co.—Homestead—March 27, 1915—Affirmed.
- Sullivan *v.* Rogers *et al.*—Right of Way—September 25, 1915—Remanded.
- Sundergard, Maud A.—Report—February 2, 1916—Affirmed.
- Svendsen *v.* Champagne—Indian Allotment—June 7, 1915—Reversed.
- Swain, James P.—Homestead—December 13, 1915—Affirmed.
- Swanson, John C.—Timber and Stone—April 27, 1915—Affirmed.
- Swanson *v.* Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Swanson *v.* Northern Pacific Ry. Co.—Homestead—March 18, 1915—Affirmed.
- Swanson *v.* Reynolds—Homestead—April 17, 1915—Instructions.
- Swanstrom, Mathilda, D. R. Whitaker, transferee—Homestead—March 6, 1915—Motion Remanded.

- Sweeney, Mrs. Louella—Desert Land—March 8, 1915—Affirmed.
- Sweeney v. Knowles—Desert Land—January 29, 1916—Affirmed.
- Squire, J. H., *et al.*—Homestead—July 16, 1915—Reversed.
- Swarth v. Lentzy—Homestead—May 15, 1915—Motion Denied.
- Swigart, Leroy D.—Homestead—May 17, 1915—Affirmed.
- Symington v. Rust—Homestead—March 22, 1915—Motion Denied.
- Synek v. Northern Pacific Ry. Co.—Selection—December 21, 1915—Affirmed.
- Talbott, Harvey A.—Homestead—February 29, 1916—Affirmed.
- Tallman v. Cooper—Homestead—August 13, 1915—Appeal Dismissed.
- Tallon, Fred D.—Homestead—June 30, 1915—Affirmed.
- Tarr Mining Co. v. Heirs of William Cransie—Homestead—February 14, 1916—Affirmed.
- Tate, George W.—Homestead—February 29, 1916—Remanded.
- Taylor, Dixie L.—Desert Land—November 5, 1915—Reversed.
- Taylor, George E.—Homestead—March 23, 1915—Remanded.
- Taylor, Mary M.—Indian Allotment—October 21, 1915—Remanded.
- Taylor, Mary M., for D. W., Alfred, Alice, and M. A.—Indian Allotment—October 21, 1915—Remanded.
- Telouse, Eli—Homestead—April 29, 1915—Affirmed.
- Temple, H. T., v. Selma Berg—Homestead—January 26, 1916—Affirmed.
- Temple, H. E., v. G. O. Berg—Homestead—January 26, 1916—Affirmed.
- Teton Cooperative Reservoir Co.—April 17, 1915—Instructions.
- Thachyk v. State of Montana—Homestead—June 26, 1915—Motion Denied.
- Theison, Nicholas—Homestead—June 12, 1915—Motion Denied.
- Thomas, Annie—Homestead—September 16, 1915—Reversed.
- Thomas, Frank L.—Homestead—February 12, 1916—Affirmed.
- Thomas, Louis L.—Timber and Stone—March 9, 1915—Affirmed.
- Thomas v. Moseley—Homestead—March 31, 1915—Affirmed.
- Thomas v. Moseley—Homestead—May 29, 1915—Motion Denied.
- Thomas v. Northern Pacific Ry. Co.—Timber and Stone—June 4, 1915—Reversed.
- Thomas v. Northern Pacific Ry. Co.—Selection—August 13, 1915—Motion Denied.
- Thompson, Albert—Homestead—July 29, 1915—Affirmed.
- Thompson, Archie M.—Homestead—March 9, 1915—Remanded.
- Thompson, Frank—Homestead—January 22, 1916—Reversed.
- Thompson, Frank A.—Desert Land—June 8, 1915—Remanded.
- Thompson, Harry E.—Homestead—November 23, 1915—Affirmed.
- Thompson, P. O., Field Bohart, transferee—Homestead—March 6, 1915—Remanded.
- Thompson, Robert W.—Homestead—February 29, 1916—Affirmed.
- Thompson, Silas A.—Homestead—October 23, 1915—Affirmed.
- Thompson, Walter A.—Homestead—March 23, 1915—Remanded.
- Thompson v. Becker—Desert Land—February 4, 1916—Affirmed.
- Thompson v. Glaister—Homestead—February 5, 1916—Affirmed.
- Thompson v. Nolan—Homestead—January 5, 1916—Affirmed.
- Thompson v. Northern Pacific Ry. Co.—Homestead—December 7, 1915—Affirmed.
- Thomson, Luther A.—Homestead—March 6, 1915—Remanded.
- Thoresen, Andrew—Homestead—March 23, 1915—Remanded.
- Thoreson, Edward—Desert Land—September 18, 1915—Modified.
- Thorpe, John A.—Desert Land—June 11, 1915—Remanded.
- Thorstenson, Evan—Report—February 29, 1916—Affirmed.
- Thurland v. Head—Indian Allotment—October 30, 1915—Modified.
- Thurman, George E., transferee—Desert Land—June 26, 1915—Reversed.
- Tiderman v. Allmendinger—Homestead—July 26, 1915—Affirmed.
- Tiderman v. Allmendinger—Right of Way—August 27, 1915—Motion Denied.
- Tierney v. Heldt—Homestead—July 27, 1915—Affirmed.
- Tillard, George, Northwest Timber Co., transferee—Report—January 29, 1916—Reversed.
- Tillian v. Keepers—Mineral—December 24, 1915—Motion Denied.
- Timmerman, Frank—Homestead—July 23, 1915—Letter to Reclamation Service.
- Timmerman, Frank—Homestead—August 30, 1915—Affirmed.
- Tingley, Moses C.—Desert Land—August 9, 1915—Affirmed.
- Titus, John W.—Homestead—November 24, 1915—Affirmed.
- Titus, John W.—Homestead—February 14, 1916—Motion Denied.
- Tkachyk, John—Homestead—May 11, 1915—Affirmed.

- Tkachyk, John—Homestead—August 6, 1915—Motion Denied.
- Tkaczyk, Mykola—Homestead—April 29, 1915—Affirmed.
- Tobin, J. H., Vance, A. J., transferee—Homestead—March 6, 1915—Remanded.
- Toeys, Herman J.—Homestead—September 3, 1915—Affirmed.
- Toeys, John—Homestead—June 12, 1915—Letter to Reclamation Service.
- Toeys, John—Homestead—September 3, 1915—Affirmed.
- Toles v. Northern Pacific Ry. Co.—Homestead—November 23, 1915—Reversed.
- Toole, Maud—Desert Land—July 17, 1915—Remanded.
- Toth, Joseph—Homestead—October 7, 1915—Affirmed.
- Totten v. Utz—Homestead—January 3, 1916—Affirmed.
- Totten v. Utz—Homestead—February 25, 1916—Motion Denied.
- Tracy v. Miller—Soldiers' Additional—August 27, 1915—Affirmed.
- Traxler, James B.—Desert Land—July 27, 1915—Affirmed.
- Tressier v. Northern Pacific Ry. Co.—Homestead—March 19, 1915—Affirmed.
- Trigg v. Cumming—Homestead—July 28, 1915—Affirmed.
- Triplett, E. B., *et al.*—Report—March 27, 1915—Affirmed.
- Troy, Paul M.—Homestead—January 26, 1916—Affirmed.
- Trudo v. Stanley—Homestead—February 4, 1916—Reversed.
- Trumbell, Rose M., *et al.*—Homestead—August 21, 1915—Reversed.
- Tryon, Frank—Homestead—April 27, 1915—Affirmed.
- Tucker, Ela J.—Homestead—March 8, 1915—Affirmed.
- Tucker, James—Desert Land—November 23, 1915—Affirmed.
- Tucker, Melvin P.—Homestead—February 29, 1916—Vacated.
- Tucker v. Lidberg—Homestead—October 1, 1915—Affirmed.
- Turner, Theodore—U. S. Commissioner—July 28, 1915—Reversed.
- Turner, Theodore—U. S. Commissioner—December 11, 1915—Reversed.
- Turner, Virginia—Desert Land—September 27, 1915—Petition Denied.
- Tye v. Linton—Desert Land—January 26, 1916—Affirmed.
- Tymofczuk, Andro—Homestead—April 29, 1915—Affirmed.
- Tyson Consolidated Gold Mining & Milling Co. v. Van Orsdal—Mineral—April 20, 1915—Motion Modified.
- Udelhoven v. Thompson—Homestead—October 27, 1915—Affirmed.
- Ullery v. Johnson—Desert Land—April 14, 1915—Affirmed.
- Ulrich, Persis G.—Homestead—September 30, 1915—Affirmed.
- Ulrich, Persis G.—Timber and Stone—December 1, 1915—Motion Denied.
- Unger, Louise O.—Desert Land—March 6, 1915—Affirmed.
- Union Pacific Ry. Co. (2 cases)—Selection—July 17, 1915—Affirmed.
- Union Phosphate Co.—Mineral—March 25, 1915—Instructions.
- United Gold Mines Co.—Mineral—June 25, 1915—Affirmed.
- United Gold Mines Co.—Mineral—July 22, 1915—Modified.
- United States Phosphate Co.—Mineral—March 17, 1915—Instructions.
- United States Phosphate Co.—Mineral—May 11, 1915—Letter to Commissioner.
- United States Phosphate Co.—Mineral—May 14, 1915—Instructions.
- United States Phosphate Co.—Mineral—November 23, 1915—Remanded.
- Upton v. Northern Pacific Ry. Co.—Homestead—December 18, 1915—Affirmed.
- Urech, Jacob—Desert Land—October 28, 1915—Remanded.
- Utah, State of—March 13, 1915—Letter to Geological Survey.
- Utah, State of—Selection—May 15, 1915—Remanded.
- Utah, State of—Selection—May 27, 1915—Remanded.
- Utah, State of, E. T. Wolverton, transferee—Selection—May 29, 1915—Remanded.
- Utah, State of—Coal—June 28, 1915—Affirmed.
- Utah, State of—State Selection—February 16, 1916—Affirmed.
- Utah, State of, A. M. Hacking, transferee—Selection—March 27, 1915—Modified.
- Utah, State of, v. Miller—Coal—July 8, 1915—Affirmed.
- Vall, Nathan R., assignee—Soldiers' Additional—April 20, 1915—Affirmed.
- Vaira, Antonio—Homestead—August 17, 1915—Affirmed.
- Valentine, Anna—Indian Allotment—December 22, 1915—Affirmed.
- Valentine, Anna—Indian Allotment—January 20, 1916—Affirmed.
- Van, Anna—Desert Land—October 27, 1915—Remanded.
- Van Ausdal, Cornelius J.—Homestead—May 12, 1915—Modified.

- Van Ausdal, James A.—Homestead—May 12, 1915—Modified.
- Van Slooten, Henry—United States Commissioner—December 11, 1915—Reversed.
- Van Tassell, R. S., *et al.*—Homestead—June 29, 1915—Affirmed.
- Van Tassell, R. S., *et al.*—Homestead—August 17, 1915—Motion Denied.
- Van Tassell, R. S., *et al.*—Homestead—October 23, 1915—Petition Denied.
- Van Voast *v.* Daniels—Homestead—April 26, 1915—Affirmed.
- Van Voast *v.* Daniels—Homestead—July 26, 1915—Motion Denied.
- Vance, A. J., transferee—Homestead—December 2, 1915—Reversed.
- Vandewalker, Frank C.—Homestead—May 29, 1915—Affirmed.
- Vanhooser, Charles—Homestead—January 22, 1916—Reversed.
- Vannett *v.* Ball—Desert Land—April 29, 1915—Affirmed.
- Varner, J. E.—Homestead—May 11, 1915—Affirmed.
- Vath *v.* Geyer—Homestead—February 19, 1916—Affirmed.
- Vaught *v.* Leek—Desert Land—June 23, 1915—Instructions.
- Venator, Ira K.—Desert Land—July 26, 1915—Reversed.
- Venn *v.* Venn—Homestead—August 27, 1915—Affirmed.
- Vesper *v.* Packard—Homestead—February 26, 1916—Affirmed.
- Viljoen, Johan C.—Homestead—June 26, 1915—Instructions.
- Virden, Arthur G.—Homestead—April 27, 1915—Affirmed.
- Voet, Jules—Homestead—January 20, 1916—Reversed.
- Vogel, Rudolph—Report—February 29, 1916—Affirmed.
- Vogelsang, Hugo C.—Homestead—February 18, 1916—Affirmed.
- Voight *v.* Bruce—Indian Allotment—January 31, 1916—Affirmed.
- Volz, Johanna T.—Homestead—March 9, 1915—Affirmed.
- Voorhees, Charles P.—Desert Land—August 2, 1915—Remanded.
- Vore, Edmund—Mineral—January 26, 1916—Affirmed.
- Voss *v.* Chandler *et al.*—Homestead—May 15, 1915—Modified.
- Voss *v.* Chandler *et al.*—Homestead—September 27, 1915—Motion Denied.
- Vosskuhler *v.* Caie—Homestead—October 1, 1915—Motion Denied.
- Votaw, Ernest—Homestead—July 31, 1915—Affirmed.
- Votaw, William I.—Homestead—October 23, 1915—Affirmed.
- Votaw, William I.—Homestead—December 7, 1915—Motion Denied.
- Wager *v.* Dun—Homestead—August 27, 1915—Affirmed.
- Wagner, Amelia P.—Timber and Stone—April 21, 1915—Affirmed.
- Wagner, Melchior J.—Homestead—April 27, 1915—Affirmed.
- Waite *v.* Hardy—Homestead—June 19, 1915—Reversed.
- Wake, George W.—Homestead—March 17, 1915—Vacated.
- Walker, B. F., *et al.*—Mineral—November 17, 1915—Affirmed.
- Walker, Benjamin H.—Homestead—March 27, 1915—Affirmed.
- Walker, Frank—Homestead—March 13, 1915—Motion Denied.
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10. Where a desert-land entryman furnishes the best evidence obtainable of the possession of a water right sufficient to properly irrigate and reclaim the land embraced in his entry, such evidence may be accepted without requiring a certificate from the State engineer as to such water right, where it is shown that such certificate can not be furnished because the State officers have not determined the water rights in the stream from which the water is taken and will not in regular course be able to do so for several years.....	212	<b>Gas Lands.</b>	
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<b>Forest Reserves.</b>		4. While a homestead application should not be allowed, after the lapse of a considerable time from the filing thereof, without a showing on the part of the applicant of his then qualifications to enter, yet where entry is allowed without such showing, and the applicant subsequently furnishes proof of his continuing qualifications to the date of the entry, it should be recognized as effective from the date of its allowance.....	226
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See <i>Indian Lands</i> , 1-3, 33.		5. Credit for military service can not be allowed in fulfillment of the one-year period of residence required by the act of April 6, 1914, which provides that upon the intermarriage of a homestead entryman and a homestead entrywoman, "after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage," they may carry both entires to completion in the manner provided by that act.....	243
<b>Fort Peck Indian Lands.</b>		6. The period of one year specified in the act of April 6, 1914, providing that the marriage of a homestead entryman and a homestead entrywoman, after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage, shall not impair the right of either to a patent, begins to run from the date of the entry, where residence was established within six months and the requirements of the homestead law	
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WIDOW; HEIRS; DEVISEE.

7. The right of a widow, heir, or devisee to complete a homestead entry which has devolved upon him or her through the death of the entryman is not affected by the fact that he or she has exhausted his or her homestead right; nor will his or her personal right to make homestead entry be affected by the fact that he or she may have completed or be engaged in completing, as widow, heir, or devisee, an entry, whether original or additional, made by a deceased homesteader, or additional by him or her, as widow, heir, or devisee----- 234

8. A widow, heir, or devisee upon whom has devolved a homestead entry through the death of the entryman has the same right to make additional entry under the enlarged homestead act as the deceased entryman had, provided he or she has continued to reside upon, cultivate, and improve the land embraced in the original entry since the death of the entryman, which additional entry may be completed by residence, cultivation, and improvement upon the land embraced in the original entry----- 234

9. In cases where the duty of the widow, heir, or devisee to reside upon the land embraced in the entry of the deceased homesteader may conflict with the duty to reside upon the land entered in his or her own right, he or she should be required to elect which claim to reside upon and perfect and which to abandon----- 234  
DESERTED WIFE.  
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#### SOLDIERS' ADDITIONAL.

##### Generally.

10. Where an application to locate a soldiers' additional right is rejected for insufficient evidence, and there is no adjudication of the invalidity of the right sought to be located, the papers filed in connection with the application may be returned to the applicant----- 387

11. A soldiers' additional entry under section 2306, Revised Statutes, canceled for failure of the entryman, during a long term of years, to furnish a required affidavit as to the nonmineral character of the land, exhausts the right, and the

entryman or assignee of the right is not entitled to have the additional right papers returned to him with a view to exercising the right a second time----- 357

##### *Basis of Right; Military Service.*

12. Where a homestead entryman, in pursuance of opportunity afforded him by the land department, elected to have his entry canceled *in toto*, because of conflict with a State swamp-land selection, with the privilege of exercising his homestead right elsewhere without impairment, such canceled entry furnishes no basis for a soldiers' additional right----- 244

13. The act of June 22, 1874, adopting the Revised Statutes, took effect from the first moment of that day, and an entry based on a soldiers' declaratory statement filed on that date is not a proper basis for a soldiers' additional right under section 2306, R. S., which limits the right of additional entry thereunder to persons who had *theretofore* made entry for less than 160 acres----- 541

14. As a basis for a soldiers' additional right the soldier must have "served ninety days in the Army of the United States"; and the fact that for pensionable purposes he was held to have been in the service of the United States for a period of ninety days within the meaning of section 4701, R. S., does not establish that he "served ninety days in the Army of the United States" within the meaning of section 2304, R. S., on which his soldiers' additional right depends----- 502

##### *Lands subject to.*

15. Lands withdrawn under the act of June 25, 1910, for examination and classification as to coal values, subject to the provisions, limitations, exceptions, and conditions contained in the act of June 22, 1910, are not subject to soldiers' additional locations under sections 2306 and 2307, Revised statutes, even though such locations be filed with a view to obtaining title to the land with a reservation of the coal therein to the United States; and the land department is without authority to receive an application to locate, enter, or select land withdrawn for classification and not yet classified, and hold the same suspended pending the result of a hearing upon the request of the ap-

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plicant to determine the character of the land with reference to its coal value -----	483	24. Lands within the portion of the Standing Rock Indian Reservation, in North Dakota, opened under the provisions of the act of May 29, 1908, are subject to designation under the enlarged homestead act as amended by the act of June 13, 1912 -----	1
Minor Children.		25. An adjoining farm entry under section 2289, R. S., is a proper basis for an additional entry under the enlarged homestead act where the lands in both the adjoining farm entry and the additional entry have been designated under the enlarged homestead act -----	570
16. The term "minor orphan children" employed in section 2307, Revised Statutes, to designate persons entitled to soldiers' additional rights under certain circumstances, contemplates that legally adopted children of a soldier shall stand on the same footing, so far as such rights are concerned, as the legitimate children of his body -----	65	26. A settler upon unsurveyed land subsequently designated under the enlarged homestead act is, upon the filing of the township plat of survey, entitled to make entry of the land embraced in his settlement claim up to the full area of 320 acres permitted by the enlarged homestead act -----	414
Approximation.		27. Lands within a national forest restored to entry under the act of June 11, 1906, are subject to appropriation only under that act and can not be included in an entry under the enlarged homestead act; nor can an entry under said act of June 11, 1906, be made the basis for an additional entry under section 3 of the enlarged homestead act -----	412
17. Only one application of the rule of approximation will be allowed to any one soldiers' additional right; and where several rights or parts of rights are used in the same location, some of which have already had the benefit of the rule, approximation will only be allowed to an amount not greater than the area of that part of the consideration which has not had the benefit of approximation -----	492	28. Residence is not required upon an entry made under section 6 of the enlarged homestead act of February 19, 1909, and the deserted wife of one who made entry under that section is entitled to submit final proof and obtain patent for such entry in her own name under the act of October 22, 1914, without showing residence upon the land -----	494
COMMUTATION.		29. The act of March 4, 1915, validating certain enlarged homestead entries by persons who had theretofore made homestead entries for less than 160 acres, is applicable only to entries made prior to January 1, 1914, and furnishes no authority for allowing entry upon a settlement initiated prior to that date -----	140
18. Commutation of a homestead entry of lands within an abandoned military reservation, made under the act of August 23, 1894, can be allowed only upon full payment of the appraised value of the land -----	485	30. An entry made in good faith prior to January 1, 1914, under section 3 of the enlarged homestead act of February 19, 1909, as additional to an additional entry made under section 6 of the act of March 2, 1889, is validated by the act of March 4, 1915 -----	320
ENLARGED.			
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19. Circular of March 16, 1915, under act of March 3, 1915, extending enlarged homestead act to Kansas -----	26		
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21. Instructions of April 17, 1915, under act of March 3, 1915, amending sections 3 and 4 of the enlarged homestead act -----	66		
22. Instructions of April 17, 1915, under act of March 4, 1915, concerning enlarged homestead entries upon petitions for designation -----	68		
22½. Circular of April 29, 1915, concerning payment of Indian price for lands in connection with applications to enter filed with petitions for designation under act of March 4, 1915 -----	88		
23. Circular of December 24, 1915, allowing credit for military service on entries under section 6 of the enlarged homestead acts -----	504		

31. The principal change made in the enlarged homestead laws by section 3 of the act of March 3, 1915, was to allow additional entry to be made by an entryman who had already submitted final proof upon his original entry; and only such entrymen can avail themselves of this provision as under the enlarged homestead laws as theretofore existing are "qualified entrymen under the homestead laws of the United States." ----- 374

32. One who made homestead entry for less than 160 acres and subsequently made additional entry under section 6 of the act of March 2, 1889, for an amount of land which together with the original entry aggregates 160 acres, is not a "qualified entryman under the homestead laws" within the meaning of the enlarged homestead acts, and is therefore not entitled to make additional entry under section 3 of the act of March 3, 1915, as additional to the entry made under section 6 of the act of 1889----- 374

### THREE-YEAR ACT.

33. An entryman submitting final proof under the act of June 6, 1912, is entitled, by virtue of the act of May 14, 1880, to claim credit for residence from the date of his settlement upon the land----- 226

34. Under the act of June 6, 1912, a homestead entryman is entitled to an absence of five months in each year, and this period should be deducted from any absence on the part of the entryman under a leave of absence in determining whether he has met the requirements of the law in the matter of residence----- 220

35. Proof submitted under the three-year homestead law must show actual residence upon the land entered for at least seven months each year for three years, and the land department is without power to extend the privilege of constructive residence for absences during the seven months' periods----- 134

36. The requirement that the entryman shall actually reside upon his claim for seven months each year does not preclude short absences for the purpose of going to market or other short absences such as are ordinarily necessary and incident to the conduct of a farm----- 134

37. An entryman who is upon his homestead one or two days each

week for a period of seven months each year can not be held to actually reside thereon within the meaning of the three-year act, no matter what may be the cause of his absences----- 134

38. Prior to the act of June 6, 1912, the homestead law prescribed no exact amount of residence, cultivation, or improvements as a condition to making final proof, merely requiring the entryman to show, within two years after the expiration of five years from the date of his entry, that he has "resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit"----- 134

39. Where proof submitted under the three-year act is rejected for insufficient showing as to residence, the entry, if made prior to the date of that act, should be held intact, subject to the submission of further proof, after the expiration of five years from the date of the entry, under the laws, rules, and regulations in force at the time the entry was made----- 134

40. The provision in the act of June 6, 1912, requiring homestead entrymen to cultivate not less than one-sixteenth of the area of their entries beginning with the second year of the entry, contemplates that the two-year period mentioned shall date from the time the entry is made and not from the time residence is established----- 152

### Imperial Valley.

1. The act of March 3, 1909, providing for the sale of isolated tracts in Imperial County, California, contemplates narrow strips, ten chains or less in width, lying between appropriated areas and not a part thereof, and has no application to contiguous lots, even though less than ten chains in width, where they together form one compact area aggregating approximately 160 acres----- 75

### Indian Lands.

See *Homestead*, 24; *Reclamation*, 1; *Repayment*, 4-5; *Right of Way*, 5.

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1. Proclamation of September 17, 1915, opening Fort Berthold lands... 452

2. Regulations of September 21, 1915, governing the opening of Fort Berthold lands----- 455

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3. Circular of February 29, 1916, extending time for payments on Fort Berthold coal lands-----	575	14. Lands in that portion of the Fort Berthold Indian Reservation opened to entry by the President's proclamation of May 20, 1891, under the provisions of section 25 of the act of March 3, 1891, which provides that such lands shall be disposed of to actual settlers only under the homestead laws, are not subject to sale as isolated tracts under the act of March 28, 1912, amending section 2455, Revised Statutes-----	354
4. Circular of February 19, 1916, governing opening of Chippewa agricultural lands-----	552	15. Lands within the ceded portion of the Flathead Indian Reservation classified as of equal value for the timber thereon and for grazing purposes are not timber lands within the meaning of the act of April 23, 1904, which declares that "lands more valuable for timber than for any other purpose" shall be classified as timber lands--	28
5. Regulations of March 20, 1915, under act of April 12, 1910, concerning villa sites around Flathead Lake-----	39	16. The grant of swamp and overflowed lands made to the State of Oregon by the act of March 12, 1860, extends to and embraces swamp and overflowed lands lying outside of the diminished Klamath Indian Reservation which at the date of the grant were in the possession and occupancy of said Indians but which by the treaty of October 14, 1864, were ceded to the United States-----	123
6. Regulations of August 4, 1915, relating to cut-over timber lands on the Flathead Indian Reservation---	240	17. Under the provision in the act of March 4, 1913, that selections in lieu of lands occupied by Indians, relinquished or reconveyed under that act, must be made "within a period of three years after the approval of this act," it is sufficient if the selections, accompanied by proper relinquishment or reconveyance, be made within the time specified, notwithstanding examination of the land and approval of the selections is not made until after the expiration of that period---	509
7. Instructions of July 15, 1915, under act of January 11, 1915, opening to exploration mineral lands in Tripp County, South Dakota (Rosebud lands)-----	195	18. No amendment operating as a new selection can be allowed after the expiration of the three-year period mentioned; and as to amendments after that time going only to matters of form, or which fall within the purview of section 2372, Revised Statutes, as amended, each case will be considered and dealt with on the particular facts presented-----	509
8. Instructions of March 23, 1915, under act of February 14, 1913, concerning selection of school lands within the Standing Rock Indian Reservation-----	43	19. The provision in the act of April 23, 1904, that upon the cancellation of trust patents on Indian allotments under that act by the Secretary of the Interior, "such lands shall not be open to settle-	
9. Instructions of April 24, 1915, under act of March 4, 1915, validating certain homestead entries of Kiowa, Comanche, and Apache lands-----	86		
10. The land department is without authority to extend the time fixed by section 8 of the act of May 30, 1908, for payment of the deferred instalments on entries of Fort Peck Indian lands made under the provisions of that act-----	501		
11. One who made homestead entry of Shoshone or Wind River Indian lands under the act of March 3, 1905, and abandoned the same after making part payment of the Indian price therefor, is not entitled, upon making second entry under that act, to credit for the instalments paid on the first entry-----	570		
12. Where lands within the former Crow Indian Reservation were sold under the act of April 27, 1904, as nonmineral, and subsequently, before final payment of the purchase price, were classified as coal, absolute patent therefor will issue to the purchaser, upon completion of the payments, notwithstanding such classification-----	121		
13. Where all right to the annual instalments of purchase price paid on an entry of irrigable lands within the Yuma or Colorado River Indian Reservation, made under section 25 of the act of April 21, 1904, is assigned and the entry relinquished, the assignee, upon making entry of the land, is entitled to credit for such instalments-----	393		

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ment for sixty days after the cancellation," has no application where the patent is canceled upon voluntary relinquishment by the allottee, the lands in such case becoming subject to appropriation without awaiting the expiration of sixty days from the date of cancellation-----	143	
20. The act of March 3, 1911, declaring the lands within the ceded portion of the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indian Reservation to be part of the public domain and open to the operation of laws regulating the entry, sale, or disposal of the same, and that no patent should be denied to entries of such lands theretofore made in good faith under any of the laws regulating the entry, sale, or disposal of public lands, did not operate to validate railroad indemnity selections theretofore presented and properly rejected, but pending ing on appeal at the date of the act, as against adverse claims-----	78	
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21. Instructions of December 27, 1915, amending last paragraph of instructions of June 14, 1909, under the act of March 3, 1909, relating to exchange of allotments-----	505	
22. Allotment on the public domain under the 4th section of the general allotment act of February 8, 1887, additional to an allotment previously allowed and upon which trust patent has issued, can not be allowed for lands noncontiguous to the original allotment-----	391	
23. An Indian allotment application under section 4 of the act of February 8, 1887, filed prior to the regulations of September 23, 1913, does not, in the absence of evidence from the Indian Office showing that the applicant is an Indian entitled to allotment, segregate the land, and a subsequent application for the same land may be received and suspended to await final action on the allotment application-----	229	
24. Where an Indian allotment application under section 4 of the act of February 8, 1887, filed subsequent to the regulations of September 23, 1913, was not accompanied by evidence from the Indian Office showing applicant entitled to allotment, and the applicant was given time to furnish such evidence, the application does not segregate the land, and other applications therefor may be received and held to await final action on the allotment application-----	229	
25. Where an allotment application under section 4 of the act of February 8, 1887, accompanied by evidence from the Indian Office showing that the applicant is an Indian and entitled to allotment, as required by the regulations of September 23, 1913, is found to be in all other respects complete and is accepted by the local officers, it operates as a segregation of the land, and subsequent applications for the same land should be rejected-----	230	
26. A Sioux Indian who has received his <i>pro rata</i> share in the lands of his tribe, or its equivalent in scrip, as provided by the act of July 17, 1854, is disqualified from taking an allotment under the 4th section of the act of February 8, 1887, and his children, whether minors or having reached their majority, who never themselves sustained any tribal relations, are by reason of his disqualification likewise disqualified to take allotment under that section-----	188	
27. Not every person possessing a degree of Indian blood and who has not received an allotment, but without tribal affiliation or relationship, is entitled to the benefits of section 4 of the act of February 8, 1887....	188	
28. The fact that a name appears on the roll made in 1908 of those entitled to share in the payment of money appropriated by Congress in pursuance of a judgment of the Court of Claims in favor of the Sisseton and Wahpeton bands of Sioux Indians, does not of itself evidence a right to be recognized as a member of the tribe and entitled to allotment under the 4th section of the act of February 8, 1887-----	188	
29. The right to allotment on an Indian reservation is limited to members of the tribe in being at the date of the closing of the allotment rolls; but the closing of the rolls does not necessarily bar applicants from taking allotments on the public domain under the 4th section of the act of February 8, 1887, if they otherwise possess the qualifications prescribed by that section-----	520	
30. The minor children of an Indian woman and a white man are entitled to allotment under section 4 of the act of February 8, 1887, only where the mother is qualified and files application for allotment in her own right and makes settlement under that section, and she alone is authorized to make application in their behalf-----	520	

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31. To entitle a member of the Turtle Mountain band of Chippewa Indians to an allotment selection on the public domain under the act of April 21, 1904, it must affirmatively appear that the applicant was in being October 8, 1904, the date the act of April 21, 1904, was ratified and accepted by the Indians.....	524	<b>Kiowa, Comanche, and Apache Lands.</b>	
32. The census of Chippewa Indians in the State of Minnesota made by the commissioners appointed under the act of January 14, 1889, must be accepted as affording an authoritative list of the names of persons entitled to be considered members of the several tribes at the time it was made and entitled to the benefits provided by said act, and the Secretary of the Interior has no authority to eliminate from the rolls any name placed thereon by the commission for any cause arising prior to such enrollment.....	531	See <i>Indian Lands</i> , 9.	
33. Where a trust patent covering an allotment on the Fort Berthold Indian Reservation was surrendered and relinquished for cancellation and other land selected in lieu thereof under the provisions of the act of October 19, 1888, new patent of like form and legal effect should issue for the lieu land so selected, as authorized by said act, notwithstanding the selected land has been classified and withdrawn as valuable for coal under the act of June 1, 1910, where it appears that the lieu land allotment was made in the field prior to the passage of the act of 1910 and was approved for patent by the Secretary of the Interior prior to the classification and withdrawal of the land as coal.....	382	<b>Klamath Indian Lands.</b>	
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		<b>Land Department.</b>	
		1. The primary power of appointment of United States mineral surveyors, and the revocation of such appointments, rests with the surveyor general subject to review by the Commissioner of the General Land Office; and where the surveyor general makes such an appointment it should not be disapproved or rejected except upon charges or grounds therefor being stated, with opportunity to the applicant to answer and for a hearing if desired.....	153
		<b>Lease.</b>	
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		1. Lands containing a deposit of bauxite, carrying alumina, or aluminum oxide, but not in sufficient quantities to make them commercially valuable for the alumina contained therein, according to any known process of extracting the mineral, are not thereby excluded from appropriation under the desert-land laws.....	217
		2. Fossil remains of dinosaurs and other prehistoric animals are not mineral within the meaning of the United States mining laws, and lands containing such remains are not subject to entry under such laws.....	325
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		2. Regulations of April 9, 1915, concerning amendment of paragraphs 49 and 85 of mining regulations.....	53
		3. The act of June 4, 1897, making lands within forest reserves subject to entry under the existing mining laws of the United States, confers the right to locate or purchase a mill site in connection with a lode claim within a national forest.....	197
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See <i>Imperial Valley</i> , 1; <i>Repayment</i> , 3.			
1. Lands in that portion of the Fort Berthold Indian Reservation opened to entry by the President's proclamation of May 20, 1891, under the provisions of section 25 of the act of March 3, 1891, which provides that such lands shall be disposed of to actual settlers only under the homestead laws, are not subject to sale as isolated tracts under the act of March 28, 1912, amending section 2455, Revised Statutes.....			354

<sup>1</sup> For "no" in first line of next to last paragraph on page 535 read "now."

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12. No title is acquired under or by virtue of a school indemnity selection until the same has been approved by the Secretary of the Interior, and where the selected lands are classified as petroleum in character, withdrawn, and placed within a petroleum reserve the Secretary is without authority to approve the selection for unconditional patent-----	127
13. The purpose of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes, was to place all the States and Territories containing public lands, and to which grants had been made for school purposes, in a similar position, alike entitled to the benefits and subject to the conditions imposed by said act-----	414
14. Under the grant for school purposes made to the State of Montana by the act of February 22, 1889, the State takes no vested interest in or title to any particular tract until it is identified by survey, and where at that time covered by a valid settlement claim the grant does not attach, and the State's only recourse is to the indemnity	

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provisions of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes-----	414
15. A desert entry of unsurveyed land, made at a time when the desert land law permitted entries of unsurveyed lands, is a disposition of the land within the meaning of section 4 of the Idaho admission act of July 3, 1890, and the act of February 28, 1891, providing indemnity for sections sixteen and thirty-six, granted for school purposes, where said sections or parts thereof have been "otherwise disposed of"-----	347
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17. Where homestead entry was allowed for a tract of land within a school section, in the belief that it was excepted from the school grant by reason of a claimed settlement by the entryman, and the State thereupon filed an indemnity selection based thereon, and it was subsequently found that the claimed settlement was not sufficient to except the tract from the grant, the indemnity selection may nevertheless be approved where the lands have been reported and withdrawn as valuable for coal-----	348
18. No settlement, residence, or improvement is required under a selection made under the act of July 1, 1898, based upon a settlement claim or entry in conflict with the Northern Pacific grant and adjusted under that act, where the person making the selection had fully complied with the requirements of the homestead law upon the land in conflict; and such selection will defeat a subsequent school indemnity selection of the same land by the State-----	26
19. The land department is without authority to issue limited patent under the act of July 17, 1914, for lands embraced in a school indemnity selection by the State of California, upon waiver by the transferee of the State of all right to the oil deposits therein, unless	

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the State shall have first consented to the issuance of such restricted patent	27	<b>Standing Rock Indian Lands.</b>	
20. In view of the act of July 17, 1914, providing for the agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas or asphaltic minerals, and the act of the legislature of the State of California of April 14, 1915, empowering the surveyor-general of the State to accept the benefits of said act, with a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, school indemnity selections by said State embracing lands subsequently so withdrawn, classified, or reported, may be approved, subject to the provisions of said act, notwithstanding such withdrawal, classification, or report	120	See <i>Indian Lands</i> , 8.	
<b>Scrip.</b>		<b>States and Territories.</b>	
1. Supreme Court scrip may not be accepted in payment for lands under the timber and stone act.	54	See <i>Survey</i> , 1-3.	
2. A location of Valentine scrip on unsurveyed land becomes fixed and certain upon identification of the selected land by survey, and thereafter the locator can not abandon the location and have the scrip returned to him.	548	1. Where the base offered by a State to support a selection is defective and the selection is suspended to afford the State opportunity to substitute a good base, but before such substitution the land is embraced in an application to make additional entry under the enlarged homestead act, which is otherwise allowable, such application constitutes an intervening adverse claim and bars amendment and completion of the State selection.	491
<b>Selection.</b>		<b>Statutes.</b>	
See <i>States and Territories</i> , 1; <i>Survey</i> , 1.		See <i>Acts of Congress and Revised Statutes Cited and Construed</i> , pages XXI and XXV.	
<b>Settlement.</b>		<b>Surface Rights.</b>	
See <i>Homestead</i> , 26; <i>Railroad Grant</i> , 3-8; <i>Reclamation</i> , 9; <i>Reservation</i> , 5; <i>School Land</i> , 1-2, 14, 17-18; <i>Survey</i> , 1.		See <i>Coal, Oil, and Gas Lands</i> , 5-11.	
1. To entitle a claimant to a preference right of entry by reason of prior settlement it is essential that he establish residence on the land claimed within a reasonable time after his first acts of settlement, to the exclusion of a home elsewhere, and such residence must be maintained pending the determination of an adverse claim.	542	<b>Survey.</b>	
<b>Settlers.</b>		1. A State secures no preference right of selection by virtue of an application for survey under the act of August 18, 1894, until withdrawal is made for its benefit; and a settlement subsequent to an application for survey and prior to such withdrawal defeats any right of selection on the part of the State.	345
See <i>Railroad Lands</i> , 1.		2. A homestead entry allowed for lands withdrawn and surveyed upon the application of the State of Idaho under the act of August 18, 1894, prior to expiration of the sixty-day preference right period accorded the State by that act within which to make selection, attaches at the expiration of that period in the absence of a valid selection of the lands by the State; and the subsequent ratification by the State legislature of an invalid selection made within that period has no retroactive effect to impair the rights of the entryman.	448
<b>Sioux Indians.</b>		3. The act of August 18, 1894, authorizing the survey of public lands on the application of a State, grants the State a preference right of selection for "sixty days from the date of the filing of the township plat of survey," and the governor of the State has no authority to limit the preference right period so fixed by the statute; and the fact	
See <i>Indian Lands</i> , 26-28.			
<b>Soldiers' Additional.</b>			
See <i>Homestead</i> , 10-17.			

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that in a published notice under that act the governor claimed a preference right on behalf of the State for "sixty days after the survey is approved" in no wise affects the preference right of the State to make selection at any time within sixty days from the filing of the township plat.....	327	soil are not subject to disposal under the timber and stone act as "chiefly valuable for timber".....	130
<b>Surveyor General.</b>		4. The timber and stone act does not contemplate that lands which in their present condition are unfit for cultivation owing to the growth of trees thereon must be disposed of under said law even though the growth is of little or no value, but to authorize disposal of lands under that law it must appear that they are chiefly valuable for their timber and are unfit for cultivation.....	129
See <i>Accounts</i> , 1.		5. The timber and stone act contemplates that payments thereunder shall be made in lawful money of the United States; and in the absence of positive statutory authority therefor, Supreme Court scrip, not being legal tender, may not be accepted in payment for lands under that act....	54
<b>Swamp Land.</b>		6. A showing by a timber and stone applicant, as required by the act of June 3, 1878, that the land applied for contains no valuable deposit of gold, cinnabar, silver, copper, or coal, constitutes merely <i>prima facie</i> evidence of the non-mineral character of the land; and where the land was, prior to the timber and stone entry, and prior to the act of June 22, 1910, withdrawn as coal land, and has since been held, as the result of a hearing, to be coal in character, the timber and stone entryman is entitled only to a restricted patent under the proviso to section 1 of said act of June 22, 1910.....	48
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2. The grant of swamp and overflowed lands made to the State of Oregon by the act of March 12, 1860, extends to and embraces swamp and overflowed lands, lying outside the diminished Klamath Indian Reservation, which at the date of the grant were in the possession and occupancy of said Indians but which by the treaty of October 14, 1864, were ceded to the United States.....	123	See <i>Indian Lands</i> , 15; <i>Timber and Stone Act</i> , 1-6; <i>Timber Trespass</i> , 1.	
3. One who made homestead entry for less than 160 acres and who would after submission of final proof upon such entry be entitled to make an additional entry under section 6 of the act of March 2, 1889, is qualified to purchase from the State and make entry under the act of May 20, 1908, of lands sold under said act and bid in by the State for drainage charges, whether said lands are contiguous or noncontiguous to his unperfected entry.....	380	<b>Timber Trespass.</b>	
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**United States Mineral Surveyor.**

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**Unreported Cases.**

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See *Desert Land*, 10; *Reclamation*, 11.

**Withdrawal.**

See *Coal, Oil, and Gas Lands*, 5, 10-11; *Phosphate Lands*, 4; *Reservation*, 5; *School Lands*, 10-12, 20.

1. An order of withdrawal has the same force and effect as an adverse claim asserted by any qualified person; and if a claim within a withdrawn area would have been subject to peaceable entry by an adverse claimant, because of lack of diligence on the part of the prospector, it would be defeated by the order of withdrawal ----- 420

**Witnesses.**

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**Words and Phrases Construed.**

1. "Legal representative" in repayment act of March 26, 1908, includes the assignee of a timber and stone entry ----- 516

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